

# Book Notes: Legal Liability of Doctors and Hospitals in Canada, by Ellen I. Picard and Gerard B. Robertson

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**Book Note****LEGAL LIABILITY OF DOCTORS AND HOSPITALS IN CANADA** by Ellen I. Picard and Gerald B. Robertson<sup>1</sup>

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**LEGAL LIABILITY OF DOCTORS AND HOSPITALS IN CANADA** is a reference book that analyzes the liability of doctors and hospitals with reference to mostly Canadian jurisprudence and legislation. The book's focus is on the tort law of negligence in the medical context (*i.e.*, medical negligence or malpractice). The introductory chapter discusses the development of the doctor-patient relationship and its fiduciary nature, which gives rise to a duty of care and to a legal and ethical duty of confidentiality.

In the second chapter, Picard and Robertson analyze elements of consent and a patient's right to refuse medical treatment. Chapter three discusses aspects of the doctor's corollary duty of disclosure, as well as the modified objective test of causation, which is specific to informed consent claims. In the fourth and fifth chapters, the authors examine the elements of a cause of action for negligence in the medical context, and they outline defences in chapter six. Chapter seven discusses the use of expert evidence, and chapter eight details the doctor's role as a defendant or an expert witness within the judicial procedures in a medical negligence suit.

Infrequently, doctors can be found vicariously liable for the negligent actions of their employees, which is the subject of chapter ten. By comparison, Picard and Robertson point out that vicarious liability is the most common basis for a hospital to be found liable in negligence. Chapter eleven sets out a hospital's vicarious liability for the negligence of its staff, as well as grounds for which the hospital can be directly liable. The twelfth chapter turns to the importance and contents of medical records, a patient's right of access to his or her records, and the admissibility of medical records in legal proceedings.

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1. 4th ed. (Toronto: Thomson Carswell, 2007) 552 pages.

In the final, thirteenth chapter, Picard & Robertson look at trends in malpractice claims—such as an increase in damage awards but a decrease in successful claimants—and suggest potential reforms or alternatives to the tort system, including a no-fault compensation scheme and alternative dispute resolution.<sup>2</sup>

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2. The authors cite the 1990 Prichard Report, which proposed reforms to the medical malpractice system with a goal to increase fairness and efficiency and reduce avoidable injury. See J. Robert S. Prichard, *Liability and Compensation in Health Care* (Toronto: University of Toronto Press, 1990), as cited in *ibid.* at 535.