

The Canadian Institute's 9<sup>th</sup> Annual Conference on

Managing Legal Risks and Responsibilities in

# MENTAL HEALTH CARE

## CO-CHAIRS

### Janice Blackburn

Partner, Bersenas Jacobsen  
Chouest Thomson Blackburn LLP

### Anita Szigeti

Partner, Hiltz Szigeti LLP

*“Interesting issues that we  
are dealing with in healthcare.  
Answered all my questions.”*

– Vivian Demian

Halton Healthcare Services

## New to the area or need a refresher?

Take advantage of our  
Pre-Conference Workshop:

**“The Fundamentals of  
Mental Health Law”**



See inside for details!

## Get critical updates and insights

on these **NEW TOPICS FOR 2009** to help you:

- **DE-ESCALATE** mental health patients in crisis situations
- **COMPLY** with *QCIPA*: **Disclosing critical incidents**
- **UNDERSTAND** your obligations in an **inquest process**
- **USE RESTRAINTS** to protect patients and staff without incurring liability
- **FACILITATE treatment incapacity appeals**: Expediting the process
- **COPE** with critical **end-of-life issues** for mental health patients
- **GET UPDATES** on the **Mental Health Court** and **diversion** programs
- **MANAGE** critical **children's mental health issues**

## Plus!

**In-depth coverage of always important topics to help you:**

- **REDUCE RISKS** posed by **violent** or **suicidal** patients
- **MEET** your obligations under current personal health **privacy** legislation
- **GAIN EXPERTISE** in presenting at **Consent and Capacity Board** hearings
- **BALANCE** mental health care patients' rights with the safety of others

*And much more!*



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## Learn How to Reduce Your Risk of Making Serious and Costly Errors!

With **patient loads on the rise** and resources diminishing, you need to be able to **quickly and correctly apply mental health law**. You must know how to gauge risk, provide appropriate patient care and correctly address patient rights, otherwise you and your organization may **face expensive and time consuming litigation**.

At **The Canadian Institute's 9<sup>th</sup> Annual "Managing Legal Risks and Responsibilities in Mental Health Care"** our expert faculty will provide you with the **practical knowledge, strategies and best practices** you need to **effectively handle mental health law issues** and to **reduce your liability exposure**. Hot topics will include:

- Meeting your obligations under current **privacy laws**: Disclosing critical incidents
- **Working with police** to de-escalate mental health patients in crisis situations
- Understanding the **inquest process** when there is a death in a MH facility
- The latest initiatives at the **Mental Health Court** and the **Consent & Capacity Board**
- Keeping patients and staff safe: Establishing **best practices for using restraints**
- Managing **end-of life issues** for mental health patients: Minimizing risk

**Back by popular demand – take advantage** of our pre-conference workshop **"The Fundamentals of Mental Health Law"** to help you get the most out of the sessions that follow.

**Don't miss this opportunity to get your questions answered by the experts!** Register now by calling toll-free **1-877-927-7936** or by visiting our website **www.CanadianInstitute.com/mental**.

We look forward to seeing you at the conference in April!

## DISTINGUISHED FACULTY

### Co-Chairs

#### Janice Blackburn

Partner, Bersenas Jacobsen Chouest Thomson Blackburn LLP

#### Anita Szigeti

Partner, Hiltz Szigeti LLP

### Speakers

#### Dr. Howard Barbaree

Professor and Clinical Director, Law and Mental Health Program, Department of Psychiatry, University of Toronto and Centre for Addiction and Mental Health

#### Jean Buie

Counsel, Law and Mental Health Program Centre for Addiction and Mental Health

#### Jennifer Chambers

Coordinator, Empowerment Council

#### Dr. Pdraig L. Darby, MB

Deputy Clinical Director Law and Mental Health Program Chair, Research Ethics Board Centre for Addiction and Mental Health

#### Kate Dewhirst

Partner, Dykeman Dewhirst LLP

#### Mary Jane Dykeman

Partner, Dykeman Dewhirst LLP

#### Curt Flanagan

Director Mental Health Criminal Law Division Ontario Ministry of the Attorney General

#### Suzan Fraser

Barrister & Solicitor

#### Dr. Michael Gordon, MD, MSc, FRCPC

Medical Program Director Palliative Care Baycrest Geriatric Health Care System University of Toronto

#### Mark Handelman BA LLB MHSc (Bioethics), Barrister & Solicitor

#### Chris Higgins

Team Lead - Forensic Mental Health Ministry of Health and Long-Term Care

#### D'Arcy Hiltz

Partner, Hiltz Szigeti LLP

#### Ron Hoffman

Coordinator, Mental Health Issues The Ontario Police College

#### Daphne Jarvis

Partner, Borden Ladner Gervais LLP

#### Bruce Kennedy

Clinical Director, Ottawa Hospital

#### Dr. A. E. Lauwers MD, CCFP, FCFP

Deputy Chief Coroner Ministry of Community Safety and Correctional Services

#### Eli Lederman

Lenczner Slaght Royce Smith Griffin LLP

#### Dr. Paul S. Links

Deputy Chief of Psychiatry, Mental Health Service, St. Michael's Hospital Arthur Sommer Rotenberg Chair in Suicide Studies University of Toronto

#### Elizabeth J. McIntyre

Senior Partner, Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

#### Jane Meadus

Barrister & Solicitor Advocacy Centre for the Elderly

#### Susan E. Opler

Vice Chair and Lawyer Member Consent & Capacity Board

#### Dr. Richard O'Reilly

Professor of Psychiatry University of Western Ontario Director of Research Regional Mental Health Care, London

#### Larissa Ruderman

Counsel, Court of Appeal for Ontario

#### The Honourable Mr. Justice Richard Schneider

Ontario Court of Justice Toronto Mental Health Court

#### James P. Thomson

Partner, Bersenas Jacobsen Chouest Thomson Blackburn LLP

#### Judith Wahl

Executive Director Advocacy Centre for the Elderly

#### Barbara J. Walker-Renshaw

Partner, Borden Ladner Gervais LLP

Register at 1-877-927-7936 or in Toronto 416-927-7936 or [www.CanadianInstitute.com/mental](http://www.CanadianInstitute.com/mental)

## DAY 1: APRIL 2, 2009

8:00 **Registration Opens - Coffee Served**

8:45 **Opening Remarks from the Co-Chairs**

### **Janice Blackburn**

Partner, Bersenas Jacobsen Chouest Thomson  
Blackburn LLP

### **Anita Szigeti**

Partner, Hiltz Szigeti LLP

9:00 **Partnering with Police to Effectively  
De-escalate Mental Health Patients  
in Crisis Situations**

### **Jennifer Chambers**

Coordinator, Empowerment Council

### **Ron Hoffman**

Coordinator, Mental Health Issues  
The Ontario Police College

### **Bruce Kennedy**

Clinical Director, Ottawa Hospital

- Dealing with violence in a mental health care setting: Assessing and managing legal risks
  - how do you handle incidents of violence?  
when should you call the police?
  - what is the role of police?
  - deciding when and how to arrest a person under the *Criminal Code*
- Identifying and meeting the unique needs of a person with mental illness in crisis
- Establishing effective communication with mental health staff and crisis team staff
- Addressing challenges faced by police officers when dealing with mentally ill persons
- Responding to people with mental illness to de-escalate violence: Practical guidelines
- Encouraging compliance with follow-up treatment: Balancing outreach and harassment
- Key success factors in developing protocol for community partnerships

10:15 **Networking Refreshment Break**

“**Much material is applicable daily in my work in general hospital psychiatry.**”

– Dr. Mary D. Thornton  
Peterborough Regional Health Centre

10:30 **Meeting Your Duty to Keep Staff  
and Patients Safe: Best Practices  
for Searches and Seizures**

### **Mary Jane Dykeman**

Partner, Dykeman Dewhirst LLP

- When can you search patients coming into mental health units?
- How extensive/invasive can the search be?
- What action can you take if patients refuse to give up weapons and/or contraband?
- What is the responsibility of the hospital and staff to turn over illegal drugs, substances and weapons?
- Searches and staffing issues: What if females enter the facility when there are only male staff?
- What are the legal and safety issues if you do not conduct a search?
- Minimizing your liability exposure: Using best practices

11:00 **Safeguarding the Privacy of Mental Health  
Patients and Complying with the *Quality  
of Care Information Protection Act*:  
Disclosing Critical Incidents**

### **Kate Dewhirst**

Partner, Dykeman Dewhirst LLP

### **Barbara J. Walker-Renshaw**

Partner, Borden Ladner Gervais LLP

- Getting up-to date on the current review of *PHIPA*: What changes can you expect?
- Resolving ethical dilemmas related to the protection of privacy
- Best practices for managing privacy obligations
- When can you make disclosures under the *Mental Health Care Act* without patient consent?
- Understanding the intersection between *QCIPA* and *PHIPA*
- What is a critical incident? Understanding what information hospitals are required to disclose
- When should the quality of care committee review a critical incident?
- Reviewing legal claims prompted by disclosure
- Deterring litigation: Developing and implementing your reporting system and disclosure policy

12:00 **Networking Luncheon**



1:15 **Managing the Risk of Liability Posed by Suicidal or Violent Patients: Developing a Suicide Prevention Program**

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**Eli Lederman**

Lenczner Slaght Royce Smith Griffin LLP

**Dr. Paul S. Links**

Deputy Chief of Psychiatry  
Mental Health Service, St. Michael's Hospital  
Arthur Sommer Rotenberg  
Chair in Suicide Studies, University of Toronto

**Elizabeth J. McIntyre**

Senior Partner  
Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

- Learning lessons from recent cases
- Assessing clients at risk of suicide and violence: What are your obligations?
- Implementing a Suicide Prevention Program to minimize your liability exposure
  - what are the best tools for assessing suicide risk?
  - what protocols should you have in place?
  - what are the key treatment and monitoring strategies?
  - devising a plan to handle crisis situations
  - assessing risk before discharge from emergency departments and in-patient units
  - key strategies for implementing the plan
- Preserving evidence in case of litigation: Best practices for record-keeping
- Minimizing liability arising from violence in a mental health care setting
  - what is the duty of a health care agency to protect the health and safety of their staff?
  - case study on workplace violence: understanding the recommendations from the Dupont inquest
  - developing and implementing policies to address the risks posed by potential violence

2:30 **Networking Refreshment Break**

“**Really enjoyed the conference. Networking was excellent. Provided me with many questions to take home and discuss the need for policy review.**”

– Donna Luther, Western Health

2:45 **Understanding the Inquest Process: What Mental Health Practitioners Need To Know**

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**Dr. Howard Barbaree**

Professor and Clinical Director, Law and Mental Health Program, Department of Psychiatry  
University of Toronto and Centre for Addiction and Mental Health

**Suzan Fraser**

Barrister & Solicitor

**Dr. A. E. Lauwers MD, CCFP, FCFP**

Deputy Chief Coroner, Ministry of Community Safety and Correctional Services

- Grasping the basics of the inquest process
  - what is an inquest?
  - who are coroners?
  - who is responsible for notifying the coroner about a death? when and how should this be done?
  - what factors will trigger a mandatory inquest?
  - when might a discretionary inquest be called?
- Determining whether an inquest should be held: Taking part in a coroner's investigation
- Participating at an inquest
  - who may be summoned to give evidence?
  - key issues in testifying about the circumstances of the death
  - how should you address the jury and make suggestions about recommendations?
  - managing the media during an inquest: best practices
- Learning lessons from recent inquests, including the Pugh inquest
- Assessing the effectiveness of inquest recommendations: Have changes actually been implemented?
- Analyzing key legal decisions regarding inquests and deaths in mental health facilities

3:45 **Using Restraints: Best Practices to Minimize Your Liability and to Protect Patients and Staff**

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**Janice Blackburn**

Partner, Bersenas Jacobsen Chouest Thomson Blackburn LLP

**Jane Meadus**

Barrister & Solicitor  
Advocacy Centre for the Elderly

**Anita Szigeti**

Partner, Hiltz Szigeti

- What is a restraint? When is it appropriate to use restraints?
- Assessing risks, consequences and benefits of using restraints
  - physical, environmental or chemical?
  - which restraint should you use when?
- Preventing injury or death: Critical precautions to take
- What patient consent is required, if any?
- Understanding the complicated law of restraint: What are the rules and regulations?
- Analyzing the Ontario *Patient Restraints Minimization Act*: What does it mean?
  - minimizing your legal liability: establishing best practice guidelines for restraint
  - evaluating and updating your current restraint policies
- Using restraints in long-term care homes: Present & future
  - under current legislation
  - under *Long Term Care Homes Act 2007*
- How will the Jeffrey James inquest recommendations change the use of restraints?
- Balancing the safety of nurses and other staff with the rights of patients

5:00 **Closing Remarks from the Co-Chairs – Conference Adjourns**

**DAY 2: APRIL 3, 2009**

8:15 **Coffee Served**

8:45 **Opening Remarks from the Co-Chairs**

9:00 **Navigating the Consent & Capacity System: How Will Recent Developments Improve the Process?**

**Dr. Padraig L. Darby, MB**

Deputy Clinical Director  
Law and Mental Health Program  
Chair, Research Ethics Board  
Centre for Addiction and Mental Health

**Susan E. Opler**

Vice Chair and Lawyer Member  
Consent & Capacity Board

**James P. Thomson**

Partner, Bersenas Jacobsen Chouest Thomson  
Blackburn LLP

- Getting up-to-date on recent SCC cases affecting practice in this area
  - analyzing *FH v. McDougal*
  - what is the standard of proof in the mental health context?
- What is the jurisdiction of Consent and Capacity Board?
- What to expect if you are going to be involved in a review: Exploring the CCB rules and practice
- Presenting sufficient evidence without damaging the therapeutic relationship: Key guidelines
- Addressing the issue of corroboration: What additional evidence do physicians need to supply?
- Improving CCB hearings: Latest CCB initiatives you need to know
  - what is the CCB Summary template and how does it work?
  - simplifying the process: pilot project on running hearings as a Board-prompted inquiry
- Increasing your chances of winning financial capacity cases
- What issues might arise if physicians don't have counsel?

10:15 **Networking Refreshment Break**

10:30 **Facilitating Appeals from Tribunal Decisions: Ensuring Mental Health Patients Don't Languish Under the System**

**D'Arcy Hiltz**

Partner, Hiltz Szigeti LLP

**Dr. Richard O'Reilly**

Professor of Psychiatry  
University of Western Ontario  
Director of Research  
Regional Mental Health Care, London

**Larissa Ruderman**

Counsel, Court of Appeal for Ontario

- Contrasting the Ontario Review Board appeals process with Consent and Capacity Board process
- What issues are appealable from the CCB?
- What happens to people who appeal a finding of treatment incapacity to the courts?
- What active steps should hospitals take to facilitate treatment incapacity appeals?
  - getting the appeal deemed meritorious and funded
  - how do you get an *amicus* appointed?
- When might a court approve a motion to treat while the appeal is pending?
- Expediting and simplifying appeals: Getting up-to-date on efforts to improve procedures

11:30 **Managing Critical Issues in End-of-Life Decision Making for Mental Health Patients: Promoting Ethical Decision-Making and Minimizing Your Legal Risk**

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**Dr. Michael Gordon, MD, MSc, FRCPC**

Medical Program Director Palliative Care  
Baycrest Geriatric Health Care System  
University of Toronto

**Mark Handelman BA LLB MHS (Bioethics)**

Barrister & Solicitor

**Judith Wahl**

Executive Director, Advocacy Centre for the Elderly

- What are the legal risks associated with withholding or withdrawing life-sustaining treatments?
  - when - and how - do you need to make an application to withdraw life support?
  - what if the family does not want to withdraw life support?
  - what if the patient is receiving no benefit from the treatment? will resource allocation be considered in the decision making?
  - analyzing the *Golubchuk* case
- Navigating prior capable wishes
  - what are the medical, legal & ethical considerations?
  - can a substitute decision maker (SDM) override a personal directive?
- What if the substitute decision makers are not acting in best interests of the patient?
  - what if there are two SMDs who can't agree?
  - how can you advocate for the patient?
- Key issues for end of life decisions when the patient has dementia and no personal directive
- Managing patient rights while controlling liability exposure: Specific issues for dementia patients
  - can dementia patients refuse to eat?
  - what if a patient needs to be restrained for his own safety but the family refuses?
  - what about the safety of staff trying to manage these patients?

12:30 **Networking Refreshment Break**

1:45 **Decriminalizing Mentally Ill Clients: The Mental Health Court and Diversion from the Criminal Justice System**

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**The Honourable Mr. Justice Richard Schneider**

Ontario Court of Justice  
Toronto Mental Health Court

**Curt Flanagan**

Director Mental Health, Criminal Law Division  
Ontario Ministry of the Attorney General

**Chris Higgins**

Team Lead - Forensic Mental Health  
Ministry of Health and Long-Term Care

- Ensuring mental health patients are successfully diverted from the criminal justice system to appropriate services
- Working effectively with mental health court support services
- Should the Crown be withdrawing serious charges? What are the implications for subsequent offenses?
- Dealing with the revolving door syndrome: Minimizing repeat offenders
- How is the Mental Health Court working as a model?
- Learning lessons from the therapeutic jurisprudence of mental health court support services
- Getting an overview of the MOHLTC's initiatives in the mental health and justice area and their effects
- Managing risk in a diversion program: Best practices

3:00 **Networking Refreshment Break**

3:15 **Exploring Critical Mental Health Issues Affecting Children**

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**Daphne Jarvis**

Partner  
Borden Ladner Gervais LLP

- Managing issues of consent to treatment: Evaluating the decision making capability of children
- When can treatment take place regardless of the child's refusal?
- Handling confidentiality issues
  - can parents withhold information from their children?
  - can children withhold information from their parents?
  - when can you disclose suicidal or homicidal intent of a child?
  - what if the child refuses treatment for an eating disorder?
- Protecting access to mental health records after the child reaches adulthood

4:00 **Closing Remarks from the Co-Chairs**

“ *Well organized overall.  
Content did not disappoint.* ”

– Dr. Russ Fleming  
Penetanguishene Mental Health Centre

# PRE-CONFERENCE WORKSHOP: WEDNESDAY, APRIL 1, 2009

2:00 - 5:00 P.M.

## The Fundamentals of Mental Health Law

### Janice Blackburn

Partner, Bersenas Jacobsen Chouest Thomson  
Blackburn LLP

### Jean Buie

Counsel, Law and Mental Health Program  
Centre for Addiction and Mental Health

- Examining the mental health system in Ontario
  - *Mental Health Act*
  - *Criminal Code*
  - *Health Care & Consent Act*
- Learning lessons from landmark cases in mental health law
- What are the legal responsibilities of institutions and health professionals?
- Grasping the essential elements of
  - *PHIPA*
  - involuntary detention
  - capacity to consent to the treatment of a mental disorder
  - substitute decision-making and powers of attorney
  - community treatment orders (CTOs)
- Becoming familiar with the Consent and Capacity Board (CCB)
  - what is the role of the CCB?
  - basic overview of a hearing at the CCB
- Getting prepared for Ontario Review Board (ORB) hearings: Winning your case
  - what are the powers and jurisdiction of the ORB?
  - what criteria are used by the ORB in determining dispositions?
  - how to properly prepare for ORB hearings
  - understanding the standards for evidence at the ORB
  - what does the “least onerous and least restrictive disposition” mean?
  - how can you comply with the least restrictive ruling?
  - defining “unfit”, “permanently unfit” and “not criminally responsible”: Board review of dispositions following these findings
  - appealing ORB decisions

## A “MUST-ATTEND” EVENT FOR:

- Heads or Chiefs of Psychiatry, Psychiatrists, Psychiatry Residents
- Representatives from hospitals, psychiatric facilities, long-term care facilities, health districts, community care agencies and correctional facilities, including:
  - CEOs, VPs, Directors, Managers, Risk Managers, Department Heads, In-House Counsel, Policy Advisors, Analysts, Researchers, Academics and Administrators
- Family doctors, physicians, nurses & other medical professionals
- Mental health advocates
- Medical experts, potential expert witnesses and consultants
- Police and corrections officials and staff
- Crown lawyers
- Government and public policy advisors
- Private practice lawyers including:  
Health law and Criminal Law



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This program has been accredited by the Law Society of Upper Canada towards the professional development requirement for certification.

Main conference	11.5	Health Law	Intermediate
Workshop	3	Health Law	Intermediate

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## DON'T MISS A SINGLE DETAIL!

All delegates to The Canadian Institute's conference on **Mental Health Care** will now receive a complimentary CD ROM with full colour graphs, charts and presentations from the conference.\*

Great for sharing with co-workers and clients!

## STILL WANT A PRINTED VERSION?

Add a Conference Materials Binder to Your Order – see registration form for details.

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April 2 - 3, 2009 | The Sutton Place Hotel | Toronto

The Canadian Institute's 9<sup>th</sup> Annual Conference on

Managing Legal Risks and Responsibilities in

# MENTAL HEALTH CARE

## Top Reasons to Attend

- ✓ **FULFILL** your privacy and disclosure obligations under *PHIPA* & *QCIPA*
- ✓ **TEAM UP** with police to de-escalate mental health patients in crisis situations
- ✓ **COMPREHEND** the inquest process and how to effectively use restraints
- ✓ **GET UP-TO-DATE** on developments at the CCB and Mental Health Courts
- ✓ **MANAGE** critical end-of-life issues for mental health patients

## REGISTRATION FORM

To expedite your registration, please mention your Priority Service Code

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1329 Bay Street  
Toronto, Ontario M5R 2C4
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## ADMINISTRATIVE DETAILS

**VENUE:** THE SUTTON PLACE HOTEL  
**ADDRESS:** 955 BAY STREET  
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### Hotel Reservations

For information on hotel room availability and reservations, please contact The Sutton Place Hotel at 1-866-378-8866. When making your reservation, please ask for "The Canadian Institute's Corporate Rate".

### Program Materials

Conference participants will receive a comprehensive set of conference materials prepared by the speakers, as an excellent reference source after the conference. If you have paid and are unable to attend, the conference materials will be shipped to you upon request only. Request must be received within 30 days upon conclusion of the conference.

### Payment Policy

Payment must be received in full by the conference date. All discounts will be applied to the Conference Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization.

### Cancellation and Refund Policy

You must notify us by email at least 48 hrs in advance if you wish to send a substitute participant. Delegates may not "share" a pass between multiple attendees without prior authorization. If you are unable to find a substitute, please notify **The Canadian Institute** in writing no later than 10 days prior to the conference date and a credit voucher will be issued to you for the full amount paid. Credit Vouchers are valid for 1 year and are redeemable against any other **Canadian Institute** conference. If you prefer, you may request a refund of fees paid less a 25% service charge. No credits or refunds will be given for cancellations received after 10 days prior to the conference date. **The Canadian Institute** reserves the right to cancel any conference it deems necessary and will, in such event, make a full refund of any registration fee, but will not be responsible for airfare, hotel or other costs incurred by registrants. No liability is assumed by The Canadian Institute for changes in program date, content, speakers or venue.

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STEP 1

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**YES! Please register the following delegate for Managing Legal Risks and Responsibilities in MENTAL HEALTH CARE**

For group discounts please call 1-877-927-7936

FEE PER DELEGATE	Register & Pay by March 5, 2009	Register & Pay after March 5, 2009
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STEP 2

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APPROVING MANAGER	POSITION	

STEP 3

### PAYMENT

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I have enclosed my cheque for \$ \_\_\_\_\_ including GST made payable to **The Canadian Institute** (GST No. R106361728)

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