



UNIVERSITY OF TORONTO
FACULTY OF LAW

Of Medical Malpractice and Methodology: Health Law Research and the Quality of Clinical Care

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**Commentators: Bernard Dickens (Faculty of Law),
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Online via zoom: <https://bit.ly/3tkWzt2>

In this session I will examine alternative ways to answer the question: What is the relationship between the medical standard of care in law and the quality of medical care in clinical practice? Using two papers—one written by a physician and the other by a lawyer—I will show how this question raises significant methodological issues which can be approached markedly in different ways. Moreover, these methodological issues impact not only the validity or the reliability of researchers' findings. They may also completely alter the very nature of the object of study which, for the purposes of this session, is medical malpractice. Thus, I will argue that the answers we give to seemingly narrow methodological questions are deeply consequential, and implicate much larger questions that health law researchers ought to grapple with, namely: Can analyses of court judgments teach physicians anything about their clinical work? If yes, what do such analyses teach physicians? And how should health law researchers (be they lawyers or physicians) approach court judgments so as to make the most of the lessons they have to offer?

Patrick Garon-Sayegh is a lawyer and doctoral candidate at the Faculty of Law, University of Toronto. His research focuses on the law of medical malpractice, medico-legal argumentation, expertise and expert evidence. His dissertation specifically examines how lawyers and medical experts argue in the courtroom to establish facts, and determine whether or not malpractice occurred in a given case.