

Jenny P. Stephenson

Counsel

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Bar Admission

Ontario 1988

Law School

University of Toronto

Practices

Litigation and Dispute Resolution
Appellate Litigation
Corporate Commercial Litigation
Professional Liability

Jenny Stephenson serves as counsel in our litigation group, after being a partner for 13 years.

Jenny has extensive experience as lead counsel at all levels of court and also before disciplinary tribunals. She has successfully defended many professionals in criminal, disciplinary and civil proceedings, including both jury and non-jury trials. She has had a broad based practice which has included commercial, medical malpractice, employment, defamation, and criminal cases.

Jenny was a practising physician before she was called to the bar in 1988. She obtained her MD degree from the University of Western Ontario in 1981, graduating on the Dean's list. She received her LLB from the University of Toronto in 1986, graduating with honours and being awarded the trial advocacy award. She is also called to the California State bar. Jenny is a graduate of the National Ballet School (1967-1974).

Examples of cases in which Jenny has appeared as counsel include:

- *Entrop v. Imperial Oil* [2000] OJ No.2689 (Ont.C.A.) – she and her colleagues argued that IOL's rules and policies for safety sensitive positions did not offend the Ontario Human Rights Code;
- *Livent Inc. v. Deloitte & Touche* – along with a team of lawyers, she represented Deloitte & Touche LLP (U.S.) in a civil action commenced by the Receiver for Livent Inc., successfully resisting claims of negligence for fairly to detect fraud by the Livent principals;
- *Thompson v. AG of Ontario, Mclean at al* – she successfully represented an employee in a high profile sexual harassment case against the Speaker of the House, and on a motion to strike Ms. Thompson's claims based on assertions of parliamentary privilege over the Speaker's conduct [1998] OJ No 2070;
- *Assessmed Inc v. CBC* – with a colleague, she successfully invoked the defence of fair comment at a seven month trial in the Superior Court of Justice [2004] OJ No 802 [Ont Sup Ct], and again at the Court of Appeal

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[2006] OJ No 2226 (Ont.C.A.), in a case where the plaintiffs alleged that they had been defamed by a Fifth Estate Program (leave to appeal to SCC denied,[2006] SCCA No 341);

- *College of Physicians and Surgeons v. Metcalfe* (2009) 98 OR (3d) 301 (Div Ct) - acting on behalf of a physician, her application was granted to the Divisional Court, requesting that *Wagg* principles be followed (with modification as required) in the context of the College seeking production of a Crown brief from the police;

- *Balasuriya v. College of Physicians and Surgeons of Ontario* (2018) ONSC 7743 (Div Ct) - successful application to the Divisional Court seeking authorization to disclose psychiatric records under s 35(9) of the *Mental Health Act* in a proceeding; the decision provides additional guidance as to the meaning of "essential in the interests of justice" on such an application;

- Many criminal trials, often involving allegations of sexual assault or fraud, including: *R v. Alfred* (1997) – part of a three lawyer team which defended a physician charged with approximately 50 counts of sexual assault and related sexual offences, obtaining acquittals on the majority of counts and a favorable sentence; *R v. Kitakufe* (2007) – defended a physician charged with extensive ODSP and OHIP fraud. as well as trafficking in narcotics; *R. v. Leckie* (2009) – successfully defended a social worker accused by two complainants of sexual assaulting them resulting in acquittals on all counts; *R v. Wong* (2004) – defended and obtained a conditional sentence for a physician charged with 44 counts of sexual assault of patients; *R v. Woollam* – (2010, OCJ) defended and obtained a conditional sentence for a physician charged with sexual assault of a patient; *R v. Piatek* - negotiated plea to a HIA offence in exchange for withdrawal of criminal charge of fraud over $5000); *R v. Daniel Robert Marshall* 2013 ONSC 2603 – successfully defended a pediatrician charged with 35 counts of sexual interference, sexual assault and indecent assault and one count of breach of recognizance, involving 22 complainants; similar act evidence application; conviction on one count; *R v. Marshall* - successfully defended pediatrician charged with 4 counts of sexual assault and sexual interference (trial December 7, 2015 in ONSC, acquittal on 2 counts and conviction on one count; single conviction overturned on appeal and acquittal substituted by Ont. CA at 2017 ONCA 801, such that physician acquitted ultimately on all counts); *R v. Dr. G* - negotiated favorable resolution in December, 2014 of a plea to a regulatory (HIA) offence following preliminary hearing on charges of OHIP billings fraud exceeding one million dollars; *R v. L* (August, 2017

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OCJ Brampton) pediatrician acquitted of two counts of indecent exposure; *R v. Clottey* 2018 ONCJ 536, August 7, 2018 - family physician exonerated in 986 paragraph judgement, 6 counts of sexual assault involving 6 female patients, 3 expert witnesses and similar act evidence application - acquittals on all counts; *R v. Picard* - negotiated favorable resolution following preliminary hearing in 2018 for neurologist charged with 11 counts of sexual assault involving 8 patients;

- *Estate of Elizabeth Thompson* – successfully defended a motion brought in 2011 by a trustee for enforcement of a settlement, by raising an issue that had never been addressed in Canadian case law [*In the Matter of the Sandi Thompson Family Trust*, 2011 ONSC 7056 [Can LII] and 2012 ONSC 1318 [Can Lii]; then effected a successful resolution of the disputed passing of accounts;

- *College of Physicians and Surgeons of Ontario v. Noriega* 2012 ONSC 4084 (Div Ct) – successfully argued an appeal based on inadequacy of reasons, overturning the decision of the Discipline Committee; and

- Successfully defended numerous College discipline matters, including *CPSO v. Karkanis* (multiple contested hearings resulting in either dismissal or withdrawal of charges, most recent being 2013 ONCPDS 14, liability decision overturned on appeal at 2014 ONSC 7018 (Div Ct), followed by withdrawal of charges; *CPSO v. Watt* (December 16, 2015; dismissal of charges against an obstetrician gynecologist following a contested hearing); *CPSO v. Eisen* (multiple matters resulting in dismissal or withdrawal of charges); *CPSO v. Richards* (July 26, 2016; dismissal of charges against a dermatologist following a contested hearing) *CPSO v. Balasuriya* (withdrawal of charges against a family physician); as well as negotiating favorable resolutions in numerous other College discipline matters, and assisting many physicians in achieving favorable outcomes at various stages of College proceedings, including complaints, complex investigations, Registration Committee matters, interim orders, and judicial reviews of interim orders.

Jenny has also written and spoken extensively in the area of health law and medical malpractice.