

(Webinar)
**Gross Negligence Manslaughter:
Should it apply to healthcare practitioners?**

**9 April 2021, Friday
4pm – 6pm (Hong Kong Time)**

On 1st December 2020, a medical practitioner in Hong Kong was found guilty of causing the death of a patient through the administration of an experimental and contaminated immunity boosting therapy. In this webinar, our expert panel discusses the ethical and legal implications of this case and the offence of gross negligence manslaughter in healthcare.

CHAIRS:



Dr Calvin Ho
Associate Professor of Law &
Co-Director, Centre for Medical
Ethics and Law, The University of
Hong Kong



Dr Philip Beh
Principal Clinical Practitioner, Department
of Pathology, Li Ka Shing Faculty of
Medicine &
Co-Director, Centre for Medical Ethics
and Law, The University of Hong Kong

SPEAKERS & PRESENTATIONS:

Ms Tracy Cheung

Healthcare & Medico-legal Advisor, Accredited Mediator & ODR Consultant
***Gross Negligence Manslaughter: Practical Considerations from a
Healthcare Defence Lawyer***



Professor Gilberto KK Leung

Tsang Wing-Hing Professor in Clinical Neuroscience, and Associate Dean (Teaching & Learning),
Li Ka Shing Faculty of Medicine, The University of Hong Kong
Medical manslaughter in Hong Kong - how, why and why not?



Professor Michael Hor

Professor, Faculty of Law, The University of Hong Kong
***Gross Negligence Manslaughter and the Medical Professions - Exception
or Exceptionalism?***



Professor James Badenoch QC

Adjunct Professor, Faculty of Law, The University of Hong Kong
Gross Negligence Manslaughter: the UK experience



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C M E L

The University of Hong Kong
Centre for Medical Ethics and Law

About CMEL

Established in 2012, The Centre for Medical Ethics and Law (CMEL) is a joint effort of two leading faculties, the Li Ka Shing Faculty of Medicine and the Faculty of Law at the University of Hong Kong. Our visions are: to become a focal point for international research excellence in the area of medical ethics and law; to co-ordinate and provide teaching and training to university students and professionals; and to promote and disseminate our expertise to the benefit of the public.

The Centre's objectives are respectively in research, teaching, knowledge exchange and training:

Research: To produce and disseminate high-quality and cutting edge research in medical ethics and law.

Teaching: To contribute to the interdisciplinary teaching and learning at the University by providing a forum for the discourse of medical ethics and law.

Knowledge Exchange: To provide expert training and continuing education to the professionals of both disciplines and to help setting the ethical standard on related issues.

Training: To promote and disseminate knowledge of medical ethics and law to the public at large and enhance the community's awareness in this regard.

Aligning with the University's vision of 'Internationalisation, Innovation and Interdisciplinarity', the Centre collaborates with institutions, professional bodies and scholars in Hong Kong and internationally in order to pursue these objectives.

About the Webinar

Gross negligence manslaughter (GNM) is a common law offence, and may be committed by a healthcare professional if death occurs as a result of grossly negligent medical treatment or care. On 1st December 2020, a medical practitioner in Hong Kong was found guilty of causing the death of a patient through the administration of an experimental and contaminated immunity boosting therapy, as well as having failed to obtain proper consent from the patient. In this seminar, our panel of experts will discuss the ethical and legal implications of this conviction, as well as the following issues: (1) Merits of the argument raised by the defence for a subjective test of grossness to be included; (2) Application of the 'de minimis' rule in establishing causation; (3) Social value of the offence, particularly in maintaining professional standards; and (4) Challenges in the determination of "grossness".

Chairs & Speakers

Chairs

Dr Calvin Ho

Associate Professor of Law & Co-Director, Centre for Medical Ethics and Law, The University of Hong Kong

Dr Philip Beh

Principal Clinical Practitioner, Department of Pathology, Li Ka Shing Faculty of Medicine & Co-Director, Centre for Medical Ethics and Law, The University of Hong Kong

Speakers

Professor James Badenoch QC

Adjunct Professor, Faculty of Law, The University of Hong Kong

Ms Tracy Cheung

Healthcare & Medico-legal Advisor, Accredited Mediator & ODR Consultant

Professor Michael Hor

Professor, Faculty of Law, The University of Hong Kong

Professor Gilberto KK Leung

Tsang Wing-Hing Professor in Clinical Neuroscience, and Associate Dean (Teaching & Learning), Li Ka Shing Faculty of Medicine, The University of Hong Kong

Programme

Gross Negligence Manslaughter: Should it apply to healthcare practitioners?

9 April 2021, Friday
4:00 pm – 6:00pm (Hong Kong Time)

4:00 - 4:10	<p>Introductory remarks by the Chairs:</p> <p>Dr Calvin Ho Associate Professor of Law & Co-Director, Centre for Medical Ethics and Law, The University of Hong Kong</p> <p>Dr Philip Beh Principal Clinical Practitioner, Department of Pathology, Li Ka Shing Faculty of Medicine & Co-Director, Centre for Medical Ethics and Law, The University of Hong Kong</p>
4:10 - 4:30	<p>Presentation 1:</p> <p>Ms Tracy Cheung Healthcare & Medico-legal Advisor, Accredited Mediator & ODR Consultant</p> <p><i>Title:</i> <i>Gross Negligence Manslaughter (GNM): Practical Considerations from a Healthcare Defence Lawyer</i></p>
4:30 - 4:50	<p>Presentation 2:</p> <p>Professor Gilberto KK Leung Tsang Wing-Hing Professor in Clinical Neuroscience, and Associate Dean (Teaching & Learning), Li Ka Shing Faculty of Medicine, The University of Hong Kong</p> <p><i>Title:</i> <i>Medical manslaughter in Hong Kong - how, why and why not?</i></p>
4:50 - 5:10	<p>Presentation 3:</p> <p>Professor Michael Hor Professor, Faculty of Law, The University of Hong Kong</p> <p><i>Title:</i> <i>Gross Negligence Manslaughter and the Medical Professions - Exception or Exceptionalism?</i></p>

5:10 - 5:30	Presentation 4: Professor James Badenoch QC Adjunct Professor, Faculty of Law, The University of Hong Kong <i>Title:</i> <i>Gross Negligence Manslaughter: the UK experience</i>
5:30 - 6:00	Panel discussion and Q & A

Abstracts

PRESENTATION 1

Ms Tracy Cheung

Healthcare & Medico-legal Advisor, Accredited Mediator & ODR Consultant

Title:

Gross Negligence Manslaughter (GNM): Practical Considerations from a Healthcare Defence Lawyer

This presentation will explain the elements and offence of gross negligence manslaughter (GNM) within the healthcare setting and context. It will also consider how the landmark case of *HKSAR V Dr Mak Wan Ling* affects healthcare practice and management and provide practical tips on how to prevent, minimise and manage the risks of GNM.

PRESENTATION 2

Professor Gilberto KK Leung

Tsang Wing-Hing Professor in Clinical Neuroscience, and Associate Dean (Teaching & Learning), Li Ka Shing Faculty of Medicine, The University of Hong Kong

Title:

Medical manslaughter in Hong Kong - how, why and why not?

The rising number of “medical manslaughter” cases in recent years has raised concerns among doctors as to the threshold for prosecution, the issue of “moral luck”, and the impact on clinical practice and patient wellbeing. Criminal law intervention in this context may also lead to an erosion of trust between the medical profession, regulatory bodies, and the public. While effort has been made to re-examine the application of the offence of gross negligent manslaughter to medical cases in the UK, it has not been an agenda in Hong Kong. This paper will explore these issues from a medical practitioner’s perspective.

PRESENTATION 3

Professor Michael Hor

Professor, Faculty of Law, The University of Hong Kong

Title:

Gross Negligence Manslaughter and the Medical Professions - Exception or Exceptionalism?

There has been considerable criticism of medical professionals being held liable for gross negligence manslaughter for inadvertently causing the death of patients under their care. The greatest obstacle in the way of law reform, either legislative or judicial, is how this potential “exception” would fit into the larger scheme of the law of gross negligence manslaughter in other contexts, for example, drivers, pilots or construction professionals, who may, in the course of their work cause death inadvertently. Is the argument for medical professionals a legitimate exception to the reach of gross negligence manslaughter, or is it just unfounded exceptionalism? Or could it be that there ought to be no general liability for causing death negligently - for medical professionals and for anyone else? These questions will be explored.

PRESENTATION 4

Professor James Badenoch QC

Adjunct Professor, Faculty of Law, The University of Hong Kong

Title:

Gross Negligence Manslaughter: the UK experience

In the light of a significant statistical increase in the number of prosecutions of healthcare providers in the UK for gross negligence manslaughter, this presentation considers the identifiable or otherwise probable reasons for this phenomenon, and the moral, ethical and societal arguments for and against such prosecutions which arise from experiences in the United Kingdom.

Biographies

CHAIRS

Dr Calvin Ho

Associate Professor of Law & Co-Director, Centre for Medical Ethics and Law, The University of Hong Kong



Dr Calvin Ho is Associate Professor with the Faculty of Law, and Co-Director of the Centre for Medical Ethics, at the University of Hong Kong. His research is primarily on the governance of health and biomedical technologies, including human genome editing, human pluripotent stem cell research, and health technologies based on Artificial Intelligence and data analytics. He is an Ethics Board member of Médecins Sans Frontières (Doctors Without Borders), and a member of the Access to COVID-19 Tools (ACT) Accelerator Ethics Working Group of the World Health Organization.

Dr Philip Beh

Principal Clinical Practitioner, Department of Pathology, Li Ka Shing Faculty of Medicine & Co-Director, Centre for Medical Ethics and Law, The University of Hong Kong



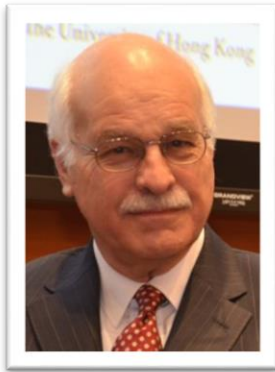
Dr Beh is Co-Director of CMEL since its inception. He is a forensic pathologist by training and has been teaching medical ethics at the faculty of medicine for over twenty years.

Biographies

SPEAKERS

Professor James Badenoch QC

Adjunct Professor, Faculty of Law, The University of Hong Kong



Professor James Badenoch is an eminent UK Queen's Counsel who has specialized for over 35 years in clinical negligence, medical law, and professional discipline. He has appeared in a succession of major cases in the UK Supreme Court, the House of Lords, the Privy Council, the Court of Appeal, the High Court, the GMC and the GDC as well as the Hong Kong Court of Final Appeal and the Hong Kong High Court.

Ms Tracy Cheung

Healthcare & Medico-legal Advisor, Accredited Mediator & ODR Consultant



Ms Tracy Cheung was a Partner at International Law firm, Kennedys, before starting her Independent Healthcare Legal Advisory and Alternative Dispute Resolution (ADR) Consulting practice in December 2019. She is passionate about Healthcare and an Advocate of Life-long Learning and Continuing Professional Education. She is qualified to practice law in both Hong Kong and England and Wales. She continues her post-graduate studies in Public Health, Digital Healthcare, Legaltech (using AI) and Online Dispute Resolution (ODR). Her niche practice focuses on providing Tailor-made, Pragmatic and Cost-effective solutions to Healthcare Professionals faced with Patient disputes. She is an accredited General Mediator and

member of HKIAC, HKMAAL & the Law Society of Hong Kong and eBRAM trained registered Mediator to conduct mediations online. She is also a member of the International Network for Law and Apology Researchers (INLAR).

Tracy mentors students of HKU to help prepare them to be future managers and leaders. She is also actively involved in local NGOs, SMEs, and Conservation projects - adopting an empowering and educational approach.

Professor Michael Hor

Professor, Faculty of Law, The University of Hong Kong



Professor Michael Hor grew up and went to school in Ipoh, Malaysia, before going to Singapore to read for an LLB. On graduation he joined the Singapore Legal Service where he administered bankruptcies and companies in liquidation and sat as a Magistrate. He joined the Faculty of Law, National University of Singapore and went off to Oxford University to read for a BCL. On his return he became a Lecturer at the Faculty. He is qualified as an Advocate and Solicitor of the Supreme Court of Singapore, and also read for an LLM in the University of Chicago.

He specializes in most matters related to criminal justice. He has taught and published in criminal law, evidence, and criminal procedure. He has been a Consultant to the Ministry of Law, Singapore, and the Criminal Practice Committee of the Law Society of Singapore. He has also been Chief Editor of the Singapore Journal of Legal Studies, a member of the editorial boards of the Singapore Academy of Law Journal and the Asian Journal of Comparative Law, and an advisor to the Singapore Law Review and the Criminal Justice Club, NUS. He has also been Chairman of the Faculty Search (Hiring) Committee and a member of the Faculty Promotion and Tenure Committee, NUS.

He has been a Distinguished Visitor at the Law Faculty of the University of Toronto, a Visitor at the Oxford Centre for Criminology, and Visiting Professor at the University of Hong Kong Law Faculty, where he was also an advisor to its Centre for Comparative and Public Law.

He was Dean of the Faculty of Law, University of Hong Kong, from 2014-9.

Professor Gilberto KK Leung

Tsang Wing-Hing Professor in Clinical Neuroscience, and Associate Dean (Teaching & Learning), Li Ka Shing Faculty of Medicine, The University of Hong Kong



Professor Gilberto K.K. Leung is a neurosurgeon, Tsang Wing-Hing Professor in Clinical Neuroscience, and Associate Dean (Teaching & Learning) at the LKS Faculty of Medicine, University of Hong Kong. He holds a LLM in Medical Law and Ethics with Distinction, and the School of Law's McLagan Prize for Best Graduate, from the University of Edinburgh. He is currently President of the Hong Kong Academy of Medicine.

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