

Elderly clients are a rapidly growing sector – are you prepared?

Advising the Elderly Client

Key Issues • Best Practices • Practical Approaches

This practical and intensive program will give you an in-depth and up-to-date understanding on the important issues, including:

- Serving the elderly client: best practices and practical tips
- Key influential elder law court cases and their implications
- What is the lawyer's role in a capacity hearing?
- How do you deal with undue influence leading to will changes?
- Predatory marriages and the test for capacity to marry
- Emerging family law and property issues in estate matters
- Strategies to avoid litigation in living wills
- End of life decisions and hearings before the Consent and Capacity Board
- Recognizing the signs of elder abuse and how to prevent it
- Dealing with banks and other front-line personnel re: forged powers of attorney and mortgage fraud
- New rules of civil procedure and their impact on estate litigation
- The impact of remarriage/common law arrangements on prior wills
- The tools you need to know to create and administer a Henson Trust
- The recently enacted *Long-Term Care Homes Act* and Regulations: new residents' rights

Plus! Optional Post-Conference Workshops:

Workshop A: *Preparing for a Capacity Hearing Before the Consent and Capacity Board*

Workshop B: *Establishing and Maintaining Henson Trusts*

Chairs

Jane E. Meadus, Staff Lawyer, Advocacy Centre for the Elderly

Charles B. Ticker, Barrister & Solicitor



DATES & TIMES

January 17 - 18, 2011

9:00 a.m. - 4:45 p.m. EDT/EST

9:00 a.m. - 12:00 p.m. EDT/EST

OPTIONAL WORKSHOPS

January 18, 2011

1:00 p.m. - 4:00 p.m.

LOCATION

Osgoode Professional Development Centre
1 Dundas St. W., 26th Floor
Toronto, ON

Conference
Webcast
Available

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Advising the Elderly Client

Key Issues • Best Practices • Practical Approaches

Older clients present a unique and challenging array of legal issues...

By 2030, 25% of the population in Canada will be over the age of 65. The baby boom generation is moving en masse into its senior years, and advising the elderly on issues unique to them is a growing area of practice for Canadian lawyers. The law affecting the elderly is complex and evolving: legal practitioners and other elder client advisers need to be fully informed on the key issues to competently advise elderly clients and their families.

This *Osgoode Professional Development* program was developed especially to help you get up-to-date on this ever-changing body of law. The program will cover a wide range of practical issues and solutions which will enable you to offer the best possible advice and service to your elderly clients and their families.

Issues covered will include:

- Judicial perspective on emerging practice issues
- Strategies for dealing with conflicts of interest with family members
- Understanding the threshold for legal capacity
 - red flags
 - what is the lawyer's role?
- Deathbed will changes – what should you do?
- When and how do you get the Public Guardian and Trustee's office involved in adult custody issues?
- Family law issues including parental support and access to grandchildren
- Key differences between a living will and a traditional will or power of attorney
- What tools do you have to deal with forged powers of attorney?
- New rules of civil procedure and their impact on estate litigation
- Properly advising your client in the creation and administration of a Henson Trust
- *Long-Term Care Homes Act* and Regulations: what you need to know

This is a unique opportunity to understand the new legislative changes, assess their impacts and the time frames for actions.

Plus! Don't miss the Optional Post-Conference Workshops, **Preparing for a Capacity Hearing Before the Consent and Capacity Board** and **Establishing and Maintaining Henson Trusts**.

Register now by visiting www.osgoodepd.ca, calling 416.597.9724 or 1.888.923.3394, emailing opd-registration@osgoode.yorku.ca or faxing 416.597.9736.

Chairs

Jane E. Meadus, Staff Lawyer, Advocacy Centre for the Elderly

Charles B. Ticker, Barrister & Solicitor

Faculty

Mary Louise Dickson, Partner, Dickson MacGregor Appell LLP

Jan Goddard, Jan Goddard & Associates

Mark Handelman, Barrister & Solicitor
Former Vice Chair, Consent and Capacity Board

Alexander I.M. Henderson, Oiyee/Henderson Barristers & Solicitors

The Hon. Justice Susan G. Himel
Ontario Superior Court of Justice

Felice C. Kirsh, Schnurr Kirsh Schnurr Oelbaum Tator LLP

Karen A. Lindsay-Skinner, Barrister & Solicitor

Brenda McGillvray, Detective Constable, Elder Abuse Response and Referral Service, Ottawa Police Service

Douglas Melville, Ombudsman and Chief Executive Officer
Ombudsman for Banking Services and Investments

Suzana Popovic-Montag, Partner, Hull & Hull LLP

Margaret E. Rintoul, Partner, Blaney McMurtry LLP

Anita Szigeti, Hiltz Szigeti LLP

Graham Webb, Staff Litigation Lawyer
Advocacy Centre for the Elderly

Kimberly A. Whaley, Senior Partner
Whaley Estate Litigation

Agenda

Day One: Monday, January 17, 2011

8:30 Registration and Continental Breakfast

9:00 Welcome and Introduction from the Chairs

Jane E. Meadus, Staff Lawyer
Advocacy Centre for the Elderly

Charles B. Ticker, Barrister & Solicitor

9:10 Recent Influential Elder Law Decisions and Their Implications

The Hon. Justice Susan G. Himel
Ontario Superior Court of Justice

Felice C. Kirsh, Partner
Schnurr Kirsh Schnurr Oelbaum Tator LLP

- Key emerging issues
- Pitfalls for practitioners
- Are the new cost orders from the Courts deterring legitimate claims?

10:00 Serving the Elderly Client: Best Practices and Practical Tips

Jan Goddard, Partner, Jan Goddard & Associates

- Establishing the relationship
- Understanding the unique needs and challenges of elderly clients
- Educating the client on life planning and estate planning
- When do you talk to family members?
- Who is your client?
 - strategies for dealing with conflicts of interest with family members
- Capacity to give instructions
- Ethical and privacy issue

10:45 Refreshment Break

11:00 Key Estate Issues When Dealing with the Elderly

Suzana Popovic-Montag, Partner, Hull & Hull LLP

Anita Szigeti, Hiltz Szigeti LLP

Karen A. Lindsay-Skynner, Barrister & Solicitor

Alexander I.M. Henderson, Oiyee // Henderson Barristers & Solicitors

Capacity Challenges

- What is capacity?
- What are the red flags?
- What is the lawyer's role?

- What are your obligations to ask the probing questions?
- How do you protect yourself as a lawyer?
- When should you refuse to take the retainer?
- When should the lawyer stop asking questions and seek an outside opinion?

Will Challenges

- How do you deal with undue influence leading to will changes?
- Predatory marriages
 - test for capacity to marry
- Deathbed changes- what you should do?
- How do you protect your client?

Adult Custody and Guardianship

- When and how do you get the Public Guardian and Trustee's office involved?
- Adult custody issues

12:30 Luncheon

1:30 Key Estate Issues When Dealing with the Elderly (Cont'd)

Family Law Issues

- Parental support
- Access to grandchildren
- Pension claims

Property Issues

- Shared property
- Granny flats and housing
- Life leases

2:30 Refreshment Break

2:45 Personal Care Concerns: Living Wills and Advance Directives

Margaret E. Rintoul, Partner, Blaney McMurtry LLP

Mark Handelman, Barrister & Solicitor

Former Vice Chair, Consent and Capacity Board

- Planning for personal care decision making
- Health care decision making
- How is the living will different from a traditional will or a power of attorney?
- Strategies to avoid litigation
- End of life decisions
- Advance directives and health care responsibilities
- Case law update

Agenda

3:30 Recognizing and Preventing Abuse and Financial Exploitation of the Elderly

Charles B. Ticker, Charles B. Ticker Law Office

Douglas Melville, Ombudsman and Chief Executive Officer, Ombudsman for Banking Services and Investments

Graham Webb, Staff Litigation Lawyer
Advocacy Centre for the Elderly

Brenda McGillvray, Detective Constable
Elder Abuse Response and Referral Service
Ottawa Police Service

- Recognizing signs of elder abuse
- Fraudulently obtained powers of attorney
- How do you raise these issues with your elder client?
- What do you do if children abuse the assets?
- Forged powers of attorney
 - identity theft and mortgage fraud
- What tools do you have to determine and unveil a fraud?
- Under what authority do you act to remedy the wrong?
- Limitation periods to consider
- Dealing with banks and other front-line personnel
- How do you revoke a Power of Attorney?
- Who pays the costs?
- New rules of civil procedure and impact on estate litigation

4:45 Day One Adjourns

Day Two: Tuesday, January 18, 2011

8:30 Continental Breakfast

9:00 Recap and Introduction from the Chairs

9:05 Remarriages and Common Law Arrangements: Estate Claims by Spouses

Kimberly A. Whaley, Senior Partner
Whaley Estate Litigation

- The impact of remarriage /common law arrangements on prior wills
- Claims by married spouses under the *Family Law Act*
- Claims by married spouses under the *Succession Law Reform Act*
- When a common law partner dies intestate what recourse does the surviving spouse have to claims on the estate?
- Spousal claims under constructive trust principles

- Spousal claims for proprietary estoppel
- Case law update

10:00 Refreshment Break

10:15 Providing for Children with Disabilities: The Effective Use of Henson Trusts

Mary Louise Dickson, Partner
Dickson MacGregor Appell LLP

For families with a child with disabilities, one way of providing for the child's ongoing needs while ensuring ongoing qualification for benefits under Ontario's Disability Support Program (ODSP) is through the use of a Henson Trust.

The proper establishment of this type of trust will also enable the child to receive an inheritance above the allowable asset limit as specified under ODSP.

This session will provide you with the legal tools you need to know to properly advise your clients in the creation and administration of a Henson Trust, including:

- Understanding the Government legislation
- Essential characteristics of the trust
- Advantages of the trust
- Disadvantages of the trust
- Establishment of the trust
- Choice of appropriate trustee(s)
- Avoiding conflicts
- Tax treatment of the trust

11:00 The Long Term Care Homes Act and Regulations: What You Need to Know

Jane E. Meadus, Staff Lawyer
Advocacy Centre for the Elderly

The *Long-Term Care Homes Act* (the Act) which came into force on July 1, 2010 replaces three pieces of legislation and is a fundamental shift in how long-term care homes are governed.

The Act provides the Ministry of Health and Long-Term Care with an abundance of new tools to enforce the legislation including new rights for residents.

In this session, experienced counsel will discuss the issues you need to know, including services to be provided by the long-term care home, nursing and personal care requirements, abuse recognition and prevention, when and how to restrain residents and preparation and communication of residents' plans of care.

12:00 Conference Adjourns

Agenda

Optional Workshops:
Tuesday, January 18, 2011: 1:00 - 4:00 p.m.

Workshop A

Preparing for a Capacity Hearing Before the Consent and Capacity Board

Anita Szigeti, Hiltz Szigeti LLP

Jane Meadus, Staff Lawyer
Advocacy Centre for the Elderly

The definition of capacity in the *Substitute Decisions Act* determines a person's mental capacity to manage property and a person's capacity to manage personal care. Capacity in respect to treatment, admission to a care facility, or a personal assistance service falls under the *Health Care Consent Act*. Under both statutes, assessment of capacity is an assessment of a person's decisional abilities that can have a profound impact on a person's life.

This interactive, hands-on workshop will provide an overview of the key issues impacting a capacity hearing and provide you with the tools you need to know to protect your client's interests. You will learn:

- Why the assessment is needed
- The type of hearings that can take place
- How to prepare if the assessment is used as evidence
- If an assessment has been done, how to use the assessment
- And much more...

Don't miss this great opportunity to get up-to-speed on the fundamentals of preparing for a hearing, including the best practices and strategies you need to know in order to ensure success.

Workshop B

Establishing and Administering Henson Trusts

Mary Louise Dickson, Partner
Dickson MacGregor Appell LLP

In Ontario it is estimated that approximately 12% of households have a person with severe disabilities who receives provincial disability benefits. Providing for the on-going care of these family members in the event of the parents incapacity or death is a top priority. As a practitioner, you must know and understand the estate planning options that are available for this client base in

order to ensure that the clients' money supplements the Ontario Disability Support Program (ODSP) and not result in a reduction or suspension of such benefits for disabled family members.

In this session, using precedents, experienced counsel will walk you through the steps required to successfully create a Henson Trust, including:

- Understanding the clients' needs and instructions
- Proper drafting of the trust including key wording requirements
- Choice of trustees and duties
- Decision-making strategies for multiple trustees
- Planning for replacement trustees
- Investing the proceeds of the trust - dos and don'ts
- Investment and income tax consequences
- Winding down the trust

You will come away with a clear understanding of the strategic issues you need to know to protect your client's interests.

Who Should Attend

- **Lawyers in private practice practising in:**
 - Health law
 - Family law
 - Wills and estates
 - Estate litigation
- **Practitioners/Advisers to long-term care homes**
- **Long-term home personnel**
 - Managers
 - Administrators
 - Operators
 - President/CEO
 - Director of Patient Care
 - Director of Professional Practice
 - Risk Managers
 - Nurses
 - Personal Support Workers
 - Board Members
- **Government Lawyers**
- **Patient Rights Advocates**
- **Social Workers**

Registration

Please complete all registrant information.

Register me for: *Advising the Elderly Client*

Course Workshop A Workshop B

I will attend: On site Via webcast (single viewer)

(Note: Workshops not available via webcast)

I am unable to attend. Please send me information about ordering program materials.

Fee Per Delegate

Course only: \$795 plus 13% HST for a total of \$898.35; Course plus workshop: \$995 plus 13% HST for a total of \$1124.35; Workshop only: \$250 plus 13% HST for a total of \$282.50. Fees include attendance, program materials, continental breakfast, lunch (Day One only) and break refreshments. Group discounts are available for both on site and webcast participants. Visit www.osgoodepd.ca for details. Please inquire about financial assistance and CPD credits.



Approved in accordance with the requirements of the **LSUC CPD program** for 9 hours (12 with workshop), **LSUC EPPM** credits hours (pending); the **Barreau du Québec, BC CPD, Law Society of New Brunswick, Northwest Territories, Nunavut and Manitoba** for 9 credit hours for CPD requirements; the **New York CLE Board** for 10.5 (14 with workshop) credit hours in the Area of Professional Practice for transitional and non-transitional lawyers. Eligible for CLE/Insurance Premium Credits Program offered by the **Law Society of PEI** and for Alberta CPD credit with the **Law Society of Alberta**. Questions? E-mail: cpd@osgoode.yorku.ca or refer to the program website.

CPD Credits

Interested in Custom and In-house Programs?

Osgoode Professional Development also offers many of its programs in-house and can customize some programs to your specific needs. If you would like further information, please contact Heather Gore, Program & Business Development Lawyer, at 416.597.8847 or custom@osgoode.yorku.ca or visit www.osgoodepd.ca.

Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

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Dates & Times

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Day 1: 9:00 a.m. - 4:45 p.m. EDT/EST
Day 2: 9:00 a.m. - 12:00 p.m. EDT/EST
Optional Post-Conference Workshops
January 18, 2011
1:00 - 4:00 p.m.

Please arrive a half hour early for sign-in and material pick-up.

Dress is business casual.

Location

**Osgoode Professional Development
Downtown Toronto Conference Centre**
1 Dundas St. W., 26th Floor
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