



# Deadbeat

TRUSTS AND ESTATES SECTION / SECTION DES FIDUCIES ET SUCCESSIONS

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## Message from the Chair



*Kimberly Whaley\**

We are excited to forge forward as we launch into our 2008-2009 Trusts and Estates Section Executive Year.

This year's Executive consists of enthusiastic and committed members of the Section, with fresh ideas and initiatives.

### Let me introduce our OBA Executive slate for this year and Subcommittee members:

**Chair:** Kimberly Whaley  
**Past Chair:** Jordan Atin  
**Vice Chair:** Suzana Popovic-Montag  
**Secretary:** Craig Vander Zee

### Subcommittees:

**Estates List:** Sendor Tator, Danielle Joel, Shael Eisen

**Statutory Review:** Robert Coates, Mary Wahbi, Laura West, Vincent De Angelis

**Advocacy, Government Relations and Communications:** Robert Coates

**Deadbeat:** Susan Stamm, Melanie Yach, Dina Stigas, Ed Esposto

**Section Programs:** Joanna Ringrose, Helena Likwornik, Melanie Yach, Sendor Tator, Jane Martin

**CLE Programming/CLE Liaison:** Eric Hoffstein, Liza Sheard, Danielle Joel

**Brown Bag Lunch:** Suzana Popovic-Montag, Sean Lawler

**Regional Issues:** Mitchell Leitman, Liza Sheard

**OPGT Guardianship Advisory Committee:** Kim Whaley



**Annual Institute:** Ann Elise Alexander, Sean Lawler

**Technology Liaison:** Sean Lawler

**CBA National Wills, Estates and Trusts Liaison:** Kim Whaley

**Year-End Dinner/Award of Excellence Dinner:** Jan Goddard, Susan Stamm, Melanie Yach

**CBA National Elder Law Liaison:** Jan Goddard

**The Capacity Law Working Group** - Jane Martin, Jan Goddard, Kim Whaley, Jordan Atin, Danielle Joel, Melanie Yach

Your Section Executive invites all of your comments, concerns and suggestions as we endeavor to continually improve the initiatives of the Section for its members.

Please e-mail me directly at [kim@whaleyestatelitigation.com](mailto:kim@whaleyestatelitigation.com), and I together with your Executive members will put forward your comments for discussion.

We look forward to an exciting and successful year!

*\* Kimberly Whaley, Whaley Estate Litigation.*

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## End of Term Dinner: May 27, 2008

The Section End of Term Dinner was held at Jamie Kennedy at the Gardiner Museum. The event was sold out for the first time ever, thanks to our hard-working subcommittee, the OBA Section Liaison, and our special program sponsors: Scotia Private Client Group (Exclusive Award and Platinum Sponsor) and Borden Ladner Gervais LLP, Fasken Martineau LLP, Hull & Hull LLP, Sweatman Law Firm, and Whaley Estate Litigation (Gold Sponsors).

Jordan Atin, last year's Chair of the Section, chaired the evening. After elections were held slating our 2008-2009 Executive, three special awards were presented



1. The **OBA Trusts and Estates Award for Excellence**, sponsored by Scotia Private Client Group, was presented to Barry Corbin.



2. The **Hoffstein Book Prize** was presented to Corina Weigl of Fasken Martineau LLP.
3. The **Widdifield Award** was presented to Archie Rabinowitz of Fraser Milner Casgrain LLP, for his article, "Trustee Exemption Clauses, Redundant or Required".



The evening was enjoyed by OBA Section members, friends, colleagues, members of the Bench, Court Operations of the Ministry of the Attorney General and Court Canada, as a collegial and celebratory evening with superb cuisine.

We look forward to Spring 2009 to see if our OBA Section program committee can top the events of this past Spring!

# Capacity Testing, Mental Competence, and Wills: Walking a Fine Line

Jeanne Desveaux\*

*Originally published in the CBA Elder Law newsletter August 2008.*

DLROW

“I can spell WORLD backwards” is the first words my client spoke to me from her hospital bed. “I really mean it- DLROW” – see that’s right isn’t it? ”

I was called the week before requesting that I come to the hospital to see a patient that needed to make some changes to her will. I was leaving for Ottawa and I said it was quite impossible and provided her daughter who made the call for her mother with the names and the telephone numbers of three lawyers who would possibly make a hospital visit. The daughter reportedly discussed this with her mother who determined that she would wait until I returned which was *after* her triple by-pass. I was a little more than alarmed when I received a telephone the following week with this bit of information.

I learned that my new client was more than a little preoccupied with her own competency. It took me a few minutes to realize that the poor anxious client, a woman in her early sixties, was referring to question four on the Mini Mental State Examination (MMSE) and thought it important to convince me that she was capable of providing me instructions for changes to her will.

Some hold the belief that as people age, they become less capable. However, age-associated memory impairment is not diminished capacity. In fact, the test that lawyers sometimes request a physician perform using an assessment tool such as the MMSE [“Mini Mental State” A Practical Method For Grading The Cognitive State Of Patients For The Clinician, *Journal of Psychiatric Research*, 12(3): 189-198, 1975] is not of much assistance to the lawyer, for the purposes that the lawyer will require. A physician may evaluate a patient’s *capacity* to make decisions; but *competence* is a legal determination. However, because of the nature of the diseases affecting older persons, such as Alzheimer’s disease, physicians will continue to be called on to assess a person’s decision-making capacity.

Assessment of decisional capacity is a functional assessment; therefore, there is no substitute for a critical observation of the process itself.

The MMSE uses 11 questions that focus on orientation, registration, attention, calculation, recall and language. The test is scored out of 30. The value of such testing is simply that it will *screen* an individual for cognitive impairment, for example, much like a simple blood test may screen an individual for diabetes. A high blood sugar reading reveals that there is the presence of sugar (glucose) that can be detected in the blood of the individual. Likewise, a score below a certain value on the MMSE detects the presence of cognitive impairment. When high glucose is detected further diagnostic follow-up is warranted before a diagnosis of diabetes is confirmed. Likewise, when an individual receives a score below a certain value on the MMSE, a 23/30 for example, further cognitive assessment and medical investigation is warranted. The various screening tests, such as the MMSE, are not shortcuts to a dementia diagnosis and cannot be used as measure of capacity (*American Journal of Psychiatry*, May 2007). The test serves to *detect* cognitive impairment and is not designed to measure impairment that would affect the decision making ability of a client to provide instructions to his or her lawyer. The limited scope of the MMSE has been recognized for many years (*International Journal of Geriatric Psychiatry*, (1997) Vol. 12:101-108) by the medical profession.

As noted in Feeney's *Canadian Law of Wills* (4<sup>th</sup> Ed.), there are a number of cases that point out that the evidence of a layperson on testamentary capacity may carry greater weight than that of a physician. The key point is the opportunity and extent that the layperson had to observe the testator and arrive at an opinion regarding the testator. The value of lay evidence is even greater when the physician or medical expert has not examined the deceased testator personally, and is merely interpreting medical records in retrospect (see, for example, *Marquis v. Westin* (1993) 49 E.T.R. 262 (NBCA)).

What this means for lawyers is that while some knowledge of the various testing methods employed by physicians, such as the MMSE is helpful, the responsibility remains with us individually as lawyers to determine the competency of our respective clients. We can not shift the burden for this determination to physicians and we certainly can not delegate this responsibility to a screening tool such as the MMSE.

*\* Jeanne Desveaux, Past President of the CBA National Elder Law Section, Current President of the Alzheimer Society of Nova Scotia.*

## Appendix

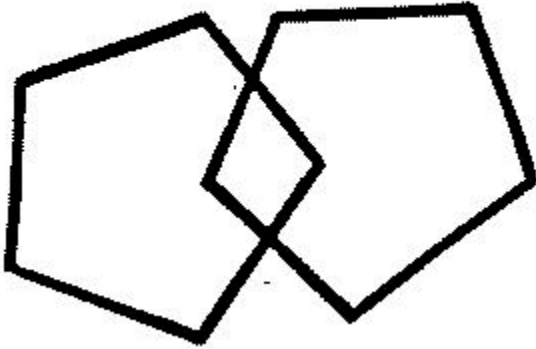
### The Mini-Mental State Examination

Patient \_\_\_\_\_ Examiner \_\_\_\_\_ Date \_\_\_\_\_

Maximum      Score

		<b>Orientation</b>
5	( )	What is the (year) (season) (date) (day) (month)?
5	( )	Where are we (state) (country) (town) (hospital) (floor)?
		<b>Registration</b>
3	( )	Name 3 objects: 1 second to say each. Then ask the patient all 3 after you have said them. Give 1 point for each correct answer. Then repeat them until he/she learns all 3. Count trials and record. Trials _____
		<b>Attention and Calculation</b>
5	( )	Serial 7's. 1 point for each correct answer. Stop after 5 answers. Alternatively spell "world" backward.
		<b>Recall</b>
3	( )	Ask for the 3 objects repeated above. Give 1 point each correct answer.
		<b>Language</b>
2	( )	Name a pencil and watch.
1	( )	Repeat the following "No ifs, ands, or buts"
3	( )	Follow a 3-stage command: "Take a paper in your hand, fold it in half and put it on the floor."
1	( )	Read and obey the following: CLOSE YOUR EYES
1	( )	Write a sentence.

1 ( ) Copy the design shown.



\_\_\_\_\_ Total Score  
 ASSESS level of consciousness along a continuum \_\_\_\_\_  
 Alert Drowsy Stupor Coma

## Carlisle Estate Revisited

*Blair L. Botsford\**

Ann Elise Alexander, in Volume 26, No. 3 of *Deadbeat*, provided an intriguing analysis of the Saskatchewan Queen's Bench decision in *Re Carlisle Estate*. Ms. Alexander concluded that the insurance declaration result in Saskatchewan should not apply in Ontario and presented a challenge for others to determine if the decision was correctly decided in Saskatchewan.

With great respect to my learned colleague, I disagree that the decision does not present a problem in Ontario. Further, while not licensed in Saskatchewan, I have taken up the challenge to determine if the case is rightly decided and have concluded that it is, as is the case upon which it relies (*Re Brown*).

To quickly summarize, *Re Carlisle Estate* involves an attempted beneficiary designation in a Will for the purposes of avoiding probate tax. The applicant, the estate trustee, took the position that a valid beneficiary designation existed. As a result, the estate trustee did not include proceeds payable under a life insurance policy on the life of the testatrix in the value of her estate for the purposes of calculating the equivalent of Ontario's estate administration tax.

The Court held that no valid beneficiary designation existed, as contemplated by the relevant legislation. Consequently, the applicant was required to include the proceeds of the policy in the estate for the purposes of calculating the probate tax. A close examination of the decision reveals that the flaw is not in the Court's reasoning, but in the drafting of the solicitor who prepared the testatrix's Last Will and Testament. Similar drafting in an Ontario Will would likely lead to the same unfortunate result.

The relevant provision of Ms. Carlisle's Will reads as follows:

*I hereby declare that the proceeds of all policies of insurance on my life owned by me at the time of my death shall be payable and paid to the person who shall from time to time be acting as my Trustee, but such proceeds shall be paid to my Trustee in his capacity as insurance trustee, and not in his capacity as Trustee of my estate assets, and the proceeds shall be held by my insurance trustee, in trust, in the same shares and upon the same trusts, terms and conditions, as if such proceeds had formed part of the residue of my estate. It is my express intention that such insurance proceeds not pass through my Will or estate, and this paragraph shall be a declaration within the meaning of The Saskatchewan Insurance Act, any successor or replacement legislation thereto and any similar legislation from time to time in force in any other applicable jurisdiction. Subject to the foregoing, my insurance trustee shall have the same powers, rights, protections, obligations and duties in connection with the administration of the insurance fund or funds as he has as a Trustee of my estate assets for the administration of the residue of my estate.*

As the above clearly indicates, Ms. Carlisle named her estate trustee as the beneficiary of the policy in the insurance declaration. This designation is the key source of the problem.

The *Saskatchewan Insurance Act*, just like the *Insurance Act* of Ontario, defines a beneficiary to be a person other than the insured or the insured's personal representative. What should have been done is to name, as beneficiaries of the policy, the persons who were ultimately to receive the proceeds which are the residuary beneficiaries of the estate. Then a trustee should have been appointed if necessary. While repeating provisions of the residue of the Will is tedious and makes for a long document, it would have avoided the result in this case. In *Re Carlisle Estate* naming a trustee was not necessary as the persons to receive the benefit of the insurance proceeds were all adults and the residuary provisions of the Will did not contain trust terms for them.

Ms. Alexander asserts that the laws creating the obligation for probate tax differ between Saskatchewan and Ontario and this should be the first basis for asserting that *Re Carlisle Estate* does not apply in Ontario. She then goes on to state that the insurance acts across common law provinces are generally uniform. However, a closer examination of the legislation illustrates why the case is in fact correctly decided and applicable in Ontario.

## Saskatchewan

Section 8(3)(b) of *The Administration of Estates Regulations* (Saskatchewan) states that insurance payable to a named beneficiary is an asset that is not to be considered as property of the deceased person in calculating the value of an estate. This provision appears to assume that the policy is on the testator's life and is owned by the testator.

Consider the situation where the testator owns a policy on the life of another person. When the testator dies, the policy will not pay out because the testator is not the life insured. However, the testator will be disposing of property. If the policy has a named beneficiary who will not receive anything on the death of the testator, does it make sense to exclude the policy when calculating the value of the estate? Would the answer be different if the policy had a cash surrender value?

From the income tax perspective, there would be a deemed disposition of the policy on the death of the testator. Depending on the nature, cost base and value of the policy, the disposition could result in a tax liability. The fact that a beneficiary is named does not change this result. There is still an asset owned by the deceased at the time of his or her death that is being transferred to another person through the estate if no successor owner is named in the policy. As a result, caution should be taken when reviewing 8(3)(b) as it does not necessarily apply to all insurance with a named beneficiary.

Section 133 of the *Saskatchewan Insurance Act* defines "beneficiary" and "insured" as follows:

*(b) "beneficiary" means a person, other than the insured or his personal representative, to whom or for whose benefit insurance money is made payable in a contract or by declaration; [emphasis added]*

*(k) “insured”: (i) in the case of group insurance means, in the provisions of this Part relating to the designation of beneficiaries and the rights and status of beneficiaries, the group life insured; and (ii) in all other cases means the person who makes a contract with an insurer.*

The designation of beneficiaries is governed by section 152(1), which states “An insured may in a contract or by a declaration designate his personal representative or a beneficiary to receive insurance money.” The heading for this section is somewhat misleading as it is entitled “Designation of Beneficiary” when clearly it deals with the payment of insurance proceeds to a beneficiary or other designated person. Fortunately, the actual wording leaves no doubt, particularly when read with section 155, that it is possible to pay proceeds to someone other than a beneficiary.

In *Re Carlisle Estate*, there was no need for a trust for the beneficiaries as the Will contemplated the named persons receiving the proceeds outright. Section 155 addresses this situation where the appointment of a trustee is desired and provides as follows:

*(1) An insured may in a contract or by a declaration appoint a trustee **for a beneficiary** and may alter or revoke the appointment by a declaration; [Emphasis added.]*

*(2) A payment made by an insurer to a trustee for a beneficiary discharges the insurer to the extent of the payment.*

The above provisions indicate that the proper method for appointing a trustee is to name a beneficiary for the policy, and then appoint a trustee to receive the monies on behalf of the beneficiary. Paying the proceeds to the trustee as beneficiary does not create a trust. For that to occur, there would have to be a separate trust already in existence such as estate trust or inter vivos trust, with the trust named as beneficiary of the policy. Payment to an estate trustee, as in *Re Carlisle*, is payment to the estate, and not to a beneficiary.

Insurance that is owned by the testator that is not on his or her life will continue to exist following the death of the testator. Section 161(1) of the *Saskatchewan Insurance Act* addresses the transfer of ownership of policies in the following manner:

*(1) Notwithstanding The Wills Act, 1996, where in a contract or in an agreement in writing between an insurer and an insured it is provided that a person named in the contract or in the agreement has, upon the death of the insured, the rights and interests of the insured in the contract: (a) the rights and interests of the insured in the contract do not, upon the death of the insured, form part of his estate; and (b) upon the death of the insured, the person named in the contract or in the agreement has the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured;*

*(2) Where the contract or agreement provides that two or more persons named in the contract or in the agreement shall, upon the death of the insured, have successively on the death of each of them, the rights and interests of the insured in the contract, this section applies successively, with any necessary modification, to each of such persons and to his rights and interests in the contract;*

*(3) Notwithstanding any nomination made pursuant to this section, the insured may, prior to his death, assign, exercise rights under or in respect of, surrender or otherwise deal with, the contract as if the nomination had not been made, and may alter or revoke the nomination by agreement in writing with the insurer.*

These provisions help to clarify the potential scope of 8(3)(b) of *The Administration of Estates Regulations* (Saskatchewan). Transfers of rights by an insured under insurance policies on lives of persons other than the insured are a different matter than the payment of proceeds under a policy on the life of the insured.

## Ontario

In Ontario, the value of an estate is defined in section 1 of the *Estates Administration Tax Act* and reads as follows:

*“value of the estate” means the value which is required to be disclosed under section 32 of the Estates Act (or a predecessor thereof) of all the property that belonged to the deceased person at the time of his or her death less the actual value of any encumbrance on real property that is included in the property of the deceased person.*

Section 32(1) of the *Estates Act* deals with the evaluation of what must be disclosed when applying for probate and states:

*The person applying for a grant of probate or administration shall before it is granted make or cause to be made and delivered to the registrar a true statement of the total value, verified by the oath or affirmation of the applicant, of all the property that belonged to the deceased at the time of his or her death.*

Regrettably, the Ontario provisions appear less clear than those in Saskatchewan as they do not specifically exempt insurance policies with a named beneficiary. Ms. Alexander in her article directs us to Form 74.4, which is one of the forms under the *Rules of Civil Procedure* used to apply for probate. On the form, a direction is printed indicating that insurance payable to a named beneficiary, or assigned for value, should not be included when calculating the value of the estate for the purposes of the application.

This is similar to the provision contained in 8(3)(b) of the *The Administration of Estates Regulations* (Saskatchewan). It also poses the same problem as the Saskatchewan section, as it is overly broad and can lead one to assume that no insurance with a named beneficiary is to be included. For the reasons stated above, I disagree with this position as it can lead to anomalous results that were likely not intended by the legislature.

Now let us turn to the *Insurance Act* (Ontario), which defines “beneficiary” and “insured” as follows:

*“beneficiary” means a person, other than the insured or the insured’s personal representative, to whom or for whose benefit insurance money is made payable in a contract or by a declaration; [emphasis added]*

*“insured”,*

*(a) in the case of group insurance, means, in the provisions of this Part relating to the designation of beneficiaries and the rights and status of beneficiaries, the group life insured, and*

*(b) in all other cases, means the person who makes a contract with an insurer;*

Section 190(1) of the *Insurance Act* (Ontario) states that an insured may, in a contract or by a declaration, designate the insured’s personal representative or a beneficiary to receive insurance money. This is exactly the same as Saskatchewan’s provision on beneficiary designation.

Add to this the same definition of beneficiary and taking into consideration the direction on Form 74.4 then, if the reasoning in *Re Carlisle Estate* were applied in Ontario, we should expect the same result.

The *Insurance Act* (Ontario) allows for the appointment of trustees for a beneficiary. This is governed by section 193, which reads as follows:

*(1) An insured may in a contract or by a declaration appoint a trustee for a beneficiary and may alter or revoke the appointment by a declaration;*

*(2) A payment made by an insurer to a trustee for a beneficiary discharges the insurer to the extent of the payment.*

Consequently, in situations where it is necessary to appoint a trustee to manage insurance proceeds on behalf of a beneficiary, the proper process is to name a beneficiary for whose benefit insurance proceeds will be payable and then appoint a trustee for the beneficiary. The proceeds will be paid to the trustee rather than the beneficiary and managed according to whatever trust provisions are stipulated.

Ontario also has comparable provisions to deal with the transfer of ownership of insurance policies. These are set out in section 199:

*(1) Despite the Succession Law Reform Act, where in a contract or in an agreement in writing between an insurer and an insured it is provided that a person named in the contract or in the agreement has, upon the death of the insured, the rights and interests of the insured in the contract,*

*(a) the rights and interests of the insured in the contract do not, upon the death of the insured, form part of his or her estate; and*

*(b) upon the death of the insured, the person named in the contract or in the agreement has the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured.*

*(2) Where the contract or agreement provides that two or more persons named in the contract or in the agreement shall, upon the death of the insured, have successively, on the death of each of them, the rights and interests of the insured in the contract, this section applies successively, with necessary modifications, to each of such persons and to his or her rights and interests in the contract.*

*(3) Despite any nomination made pursuant to this section, the insured may, prior to his or her death, assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as if the nomination had not been made, and may alter or revoke the nomination by agreement in writing with the insurer.*

Based on my comments above with respect to the *Saskatchewan Insurance Act*, these provisions are the ones that address the situation where a person owns a policy, potentially with a named beneficiary that will not pay out on their death.

### **Re Brown Decision**

Ms. Alexander also states that the decision in *Re Brown*, which was followed by the Court in *Re Carlisle Estate*, was largely ignored in Ontario when it first came out. It is this author's opinion that the decision in *Re Brown* is correct and supported by Ontario legislation. Therefore, it would be a mistake to ignore this decision as it is directly applicable in Ontario.

In *Re Brown*, the Will of the deceased contained the same problematic wording as in *Re Carlisle Estate* since it was the deceased's estate trustees who were named as beneficiaries of the policy. This does not conform to the definition of beneficiary in the legislation.

The simple conclusion to be taken away from these cases is to draft carefully if you want to offer your clients one of the few opportunities afforded them to avoid estate administration tax. Scarcity of words may make the document appear concise and more readable for the client; however, it is an invitation to an errors and omission claim. Neither Saskatchewan nor Ontario legislation supports the payment of insurance proceeds to an estate trustee as being payment to a validly designated beneficiary. However, the legislation in both provinces does offer the tools to avoid probate tax if properly employed.

*\* Blair L. Botsford, B.A., LL.B., M.A., TEP, Partner, Gowling Lafleur Henderson LLP, with the assistance of Geoff Rabideau, former student-at-law.*

## *Omicciuolo (Estate Trustee of) v. Pasco*, [2008] 90 O.R. (3d) 175 (O.C.A.)

*Samantha Preshner\**

As anyone who practices estate litigation knows, alleged dependant common law partners of deceased persons have been categorized in numerous ways by the dearly departed's family members and/or former spouses. However, one of the things a dependant should not be classified as is a creditor of the estate.

In *Omicciuolo (Estate Trustee of) v. Pasco* the Ontario Court of Appeal has determined that an alleged dependant cannot be categorized as a person with a 'claim or demand' pursuant to sections 44 and 45 (liquidated and unliquidated claims, respectively) of the *Estates Act*, as these provisions are restricted to creditors.

The deceased died intestate in 2005. At the time of his death he lived in Toronto.

The deceased and his estranged spouse ("the appellant") had entered into a separation agreement in 1998 wherein the appellant released all of her rights to the deceased's estate, including her right to act as Estate Trustee. Nonetheless, the appellant applied for and received a Certificate of Appointment of Estate Trustee Without a Will.

The respondent alleged that she had been in a relationship with the deceased since 1998 and that she cohabited with him as his common law partner from 2000 until his death. The appellant took the position that the respondent did not cohabit with the deceased and was, in fact, the deceased's 'housekeeper'.

The appellant served the respondent with an application, returnable in Newmarket, wherein she sought an Order for vacant possession of the deceased's Toronto residence or, in the alternative, an Order allowing for the sale of said property and occupation rent from the respondent in the interim. The appellant also served the respondent with a Notice of Contestation in the Newmarket action pursuant to sections 44 and 45 of the *Estates Act* which provide that:

"Where a claim or demand is made against the estate....[the Estate Trustee] may serve the claimant with a notice in writing that they contest [the claim]"

Once a claimant has received a Notice of Contestation, the claimant has 30 days from the date of service, or three months if a Judge of the Superior Court so allows, to file a statement of claim, affidavit, copy of the Notice of Contestation and then apply for an Order. Failure to adhere to the timelines will result in the claim being:

"...deemed to have [been] abandoned and it is forever barred"

The parties agreed to adjourn the application and to preserve their rights with respect to the remaining claims while they tried to negotiate a settlement. The parties did not specifically address the Notice of Contestation and its corresponding timelines.

While negotiations were ongoing, the respondent delivered a notice of cross-application for a declaration that she was the constructive trustee, as well as a dependant of the deceased. However, the respondent did not file the requisite affidavit within the limitation period as required by sections 44 and 45 of the *Estates Act*.

The settlement efforts were ultimately unsuccessful and the appellant delivered a notice of return of application in which where in she sought a declaration that the respondent's failure to respond to the Notice of Contestation within the allotted timeframe, rendered the claim abandoned and statute-barred.

The respondent, in turn, objected that the relief sought by the appellant constituted a nullity as the application should have been made in Toronto, where the certificate was issued, rather than in Newmarket.

The application Judge found that the appellant's Notice of Contestation constituted a nullity, as it should have been made in Toronto and as such the limitation period under sections 44 and 45 of the *Estates Act* had not started to run.

The appellant appealed the application Judge's finding. The Court of Appeal dismissed the appeal and returned the outstanding matters to the Newmarket Court for transfer or disposition. Justice S. E. Lang delivered the unanimous reasons of the Court of Appeal. The two issues addressed by the Court of Appeal were:

1. Whether the appellant's failure to issue the Notice of Contestation in Toronto constituted a nullity; and
2. Whether the respondent could properly be categorized as a person with a 'claim or demand' pursuant to sections 44 and 45 of the *Estates Act*.

With regard to the first issue, the Court of Appeal found that the appellant's failure to issue the Notice of Contestation in Toronto, constituted an irregularity rather than a nullity and that this irregularity could have been easily remedied via a transfer of proceedings.

With regard to the second issue, the Court of Appeal reviewed the terms 'claim or demand' as set out in sections 44 and 45 of the *Estates Act* and determined that, when viewed within the context of the legislation as a whole, these provisions were intended to apply to creditors rather than beneficiaries or alleged dependants.

The Court of Appeal referenced case law and a number of secondary sources, including Widdifield on Executors and Trustees, 6<sup>th</sup> ed., for their reasoning and noted that "[sections 44 and 45 of the *Estates Act* are] seldom used [and that] the claims or demands captured by the provisions are those brought by creditors".

The Court of Appeal further noted that as the respondent's claim is, for the most part, one of dependency, the proper legislative provisions regarding timelines are those which are set out in the *Succession Law Reform Act* Part V - Support of Dependants.

*\* Samantha Preshner, Counsel, Office of the Children's Lawyer. This case comment represents the opinion of the author and does not represent or embody the official position of The Children's Lawyer or the Ministry of the Attorney General.*

# The Paul Penna Estate: Summary Judgment Appealed

*Justin DeVries\**

## Introduction

In an earlier edition of *Deadbeat*,<sup>1</sup> I wrote a case comment on the decision of Justice Greer granting partial summary judgment in the Estate of Paul Penna.<sup>2</sup> The decision was appealed. As recently reported in the *Ontario Reports*, the Court of Appeal (“**C.A.**”) dismissed the appeal.<sup>3</sup> What follows is a consideration of the C.A.’s decision.

The C.A. wrote a crisp and clear decision and I borrow heavily from the text of MacPherson J.A., who wrote the decision.

## Facts

The appellant, Pauline Landen, was married to Barry Landen (“**Landen**”), an accountant by training. In administering the estate of his business partner and friend, Landen misappropriated several million dollars from the Penna estate. Once Landen’s misconduct was discovered, an estate trustee during litigation was appointed. The respondents, the estate trustee during litigation and various charities that were beneficiaries under Paul Penna’s will, tried to recover some of the money from Landen.

Justice Greer granted partial summary judgment against Landen. She further declared that Pauline Landen had no beneficial interest in the current matrimonial home as the money used to purchase and renovate the home had come from funds that Landen had taken from the Penna estate. While Pauline Landen had hoped to sell the matrimonial home herself, Justice Greer refused to discharge a certificate of pending litigation from the title of the matrimonial home. Pauline Landen appealed (her husband did not).

The C.A. summarized Pauline Landen’s appeal as follows:

... the effect of the motion judge’s decision was to ensnare a large portion of her own money, approximately \$565,000, in her husband’s wrongful conduct relating to the Penna estate. Accordingly, she seeks modification of the motion judge’s order to permit recovery of the amount from the imminent sale of the matrimonial home.

The C.A. described the basic facts of the case as “outrageous” and “sad”. Paul Penna (“**Penna**”) died in August 1996. His estate was valued at approximately \$24 million. Penna was a successful businessman who made a name for himself in the mining industry. From 1981 to 2004, Landen worked for Agnico-Eagle, a company owned by Penna. Landen described his relationship with Penna as one of father/son.

In his Will, Penna bequeathed \$100,000 to Landen and appointed him as one of his three estate trustees along with his wife, Lorraine Penna, as well as a business associate, Charles Langston (who I represent).

In its decision, the C.A. noted as follows:

Almost immediately, Landen managed to shunt the other two executors to the sidelines. He started to loot the estate. His misconduct was not discovered until 2004...

In 2007, Landen admitted to having taken \$2,668,486 from the Penna estate. It appears that several million additional dollars are also missing and unaccounted for.

It became clear that in administering the Penna estate, Landen had used estate funds to purchase and renovate a “luxury residence” in Forest Hill in 1997. The purchase price was \$1,185,000 and renovations cost \$942,054. Landen put title to the house in his wife’s name. The C.A. held that the money to fund the purchase price and renovations came directly or indirectly from the Estate -- money which was supposed to go to many “worthy charities”.

Landen also donated approximately \$1,000,000 to the United Jewish Appeal (“UJA”), even though the UJA was not named as a beneficiary in the Will. Not surprisingly, the C.A. labelled Landen’s misconduct “egregious”.

In her decision, Justice Greer granting partial summary judgment against Landen in the amount of \$3,733,455.20 based on Landen’s own admissions. Justice Greer also declared that Pauline Landen had no beneficial interest in Forest Hill matrimonial home. She further declared that the home was held on a constructive trust by Landen for the Estate and made a vesting order of title in favour of the Penna estate. The home ultimately sold for \$3,250,000.

Pauline Landen appealed principally with respect to Justice Greer’s treatment of the matrimonial home. The issues before the C.A. were as follows:

1. Did Justice Greer err by imposing a constructive trust on the matrimonial home in favour of the Penna estate?
2. Did Justice Greer err by making an order vesting title to the matrimonial home in the Penna estate?
3. Did Justice Greer err by not recognizing and making proper allowance for the money Pauline Landen had contributed to the matrimonial home?

### Constructive Trust

The C.A. did not accept the submission of Pauline Landen. The C.A. agreed with the reasoning of Justice Greer that the Forest Hill home did not belong to Pauline Landen. According to the C.A., neither Pauline Landen nor her husband paid anything towards the purchase and/or renovations of the home, which totalled more than \$2,000,000. As such, the C.A. agreed with Justice Greer that since the money came from Landen in his capacity as a fiduciary, a constructive trust or express trust flowed from him and the money could be traced from him to the house purchase and renovations. Pauline Landen therefore had no legal or beneficial interest in the house.

### Vesting Order

Pauline Landen contended that Justice Greer erred by making an order vesting title in the Forest Hill home in the Penna estate. Pauline Landen submitted that the respondents did not seek this relief in their Notice of Motion. The C.A. disagreed and relied on section 100 of the *Courts of Justice Act* which states:

A Court may by order vest in any person an interest in the real or personal property that the Court has authority to order be disposed of, encumbered or conveyed.

The C.A. noted that a vesting order is a discretionary remedy. As such, Justice Greer exercised her discretion and vested the Forest Hill home in the Penna estate. In a case where the relief sought and granted was an order for sale of the property with the proceeds of the sale being paid to the Penna estate in partial satisfaction for the money taken from the estate by Landen, both the constructive trust and vesting order were only logical and even necessary precursors to the orderly sale of the property.

## Money in the Matrimonial Home

The C.A. recognized that this issue was at the heart of the appeal. Pauline Landen contended that even if a constructive trust and vesting order were appropriate in the circumstances, they failed to recognize and take into account the fact that she had contributed some of her own money to the Forest Hill matrimonial home over the years.

The C.A. was not swayed by this argument:

Any notional entitlement the Appellant might have to reimbursement for personal money directed towards the Forest Hill home is rendered nugatory by the financial benefits she has enjoyed during a decade of living in the home.

Pauline Landen further contended that she should recover her share of the net proceeds that came from the sale of the family's previous matrimonial home in Thornhill, which was not acquired through her husband's misconduct. The total amount was said to be \$443,000. The C.A. held that there was no link between the money from the Thornhill and Forest Hill matrimonial homes. Firstly, Landen admitted that all of the money used to purchase and renovate the Forest Hill home came from the money he misappropriated from the Penna estate. Secondly, the matrimonial home was not sold until 18 months after the Forest Hill home was purchased. As such, the C.A. held that Justice Greer did not err by failing to allocate some of the projected proceeds of the pending sale of the Forest Hill home to reimburse Pauline Landen for her share from the Thornhill matrimonial home.

Finally, Pauline Landen maintained that part of the proceeds of the sale of the Thornhill home had been used to repay some of the monies taken from the Penna estate and could not be traced to the Forest Hill home. However, as the C.A. noted, if this was indeed the case, Pauline Landen could pursue a claim against her husband or the estate for reimbursement of this amount.

Given the issues still outstanding regarding the administration of this estate, including an appeal of a limitation defence, I am confident we have not heard the last of the Penna estate.

\* *Justin DeVries, Hull and Hull LLP*, (416) 369-4781.

<sup>1</sup> Fall 2007

<sup>2</sup> [2007] O.J. No 3667 (S.C.J.)

<sup>3</sup> (2008) 90 O.R. (3d) 673

## *MacDougall v. MacDougall Estate*, [2008] O.J. No. 2930 (S.J.C.)

What is adequate provision for proper support in Part V of the *Succession Law Reform Act*?

*Susan J. Stamm\**

The deceased died at the age of 74 in 2004. He was survived by:

- the plaintiff, his second wife, aged 52;
- his two children from his first marriage (his first wife had died), aged 46 and 50; and
- 7 grandchildren and great grandchildren.

The deceased and the plaintiff had no children together and the plaintiff had no children previously.

The plaintiff brought this application seeking support under Part V of the SLRA.

The deceased had met the plaintiff after his first wife passed away. When they met, he was a successful businessman and was 49. She was 27, single and employed as an insurance broker. They married in 1984 when she was 32 and he was 54. They lived an affluent lifestyle. At his request, she stopped working in 1988 and has not worked since.

He left a primary and secondary will. In his primary will, he left the plaintiff the contents of his home and any boat or car owned at the time. He provided for \$50,000 bequests to each of his grandchildren and great-grandchildren. He divided the residue of the estate between his two children. He also confirmed that the plaintiff was the designated beneficiary of his RRIF and life insurance policy, and that she would inherit the matrimonial home as joint tenant.

In his secondary will, which dealt with his private company (a golf course), the deceased provided that the shares of the private company would be sold and proceeds divided equally between his two children.

Justice T. D. Ray found that the plaintiff received a total of \$1.13 million in assets both from within and outside of the estate. The total estate was valued at approximately \$1.6 million.

The plaintiff argued that the provision made for her was not adequate provision for her proper support. She advised that the deceased told her that she would be a millionaire after he died and would never have to work again.

Justice Ray reviewed the law and restated the following legal points:

1. A dependant has the burden of satisfying the court that reasonable provision was not made by the deceased for her support.
2. Only when the court finds that the deceased has not made adequate provision for her proper support (the first step), can the court exercise its discretion to award support from the estate (the second step).

3. The court may look to the 18 enumerated factors in section 62(1) of the SLRA in considering the adequacy of the support made in the first step.
4. In the first step, the court must consider the circumstances from the deceased's point of view, as well as the dependant's circumstances at the time of the hearing.
5. The court is required to place itself in the position of the testator and consider what he ought to have done in all the circumstances, treating the testator as a "wise and just, rather than a fond and foolish, husband".
6. The purpose of Part V of the SLRA is not to enable the claimant to acquire an estate, but to ensure the adequacy of her support.
7. The court should not interfere lightly with a deceased's will.

Justice Ray dismissed the plaintiff's claim, finding that she had failed to prove that the deceased had made inadequate provision for her proper support.

Justice Ray found that her claim was driven by what she stated to be the parties' lifestyle – wintering in Florida, traveling, playing golf, and socializing. Justice Ray considered that the parties had lived a more extravagant lifestyle prior to 1998 when the deceased became ill. After that point, their lifestyle was much reduced (no more winters in Florida and limited vacations) until his death in 2004.

In her claim, the plaintiff sought to receive from the estate funds to enable her to live the lifestyle she had enjoyed with the deceased prior to 1998. Her budget, which included a European vacation (the deceased had never taken her to Europe), a reserve for a new car, and high leisure expenses, was found by Justice Ray to be overstated and unreasonable.

Justice Ray considered the fact that she was healthy, without dependants and children, and 56 years old at the time of the application. His Honour did not say so expressly, but it appears that he was of the view that she could contribute to her own support if she wished to live more extravagantly. Of note, she had not worked from 1988, at the deceased's urging. His Honour also considered evidence that the deceased gave careful consideration to the disposition of his estate and to her needs.

In my view, the case provides a good reminder that a claimant is only entitled to adequate provision for her proper support. She is not entitled to receive a guarantee of the lifestyle enjoyed by the parties prior to death. It also underlines the importance of careful and conservative budgeting in making these applications.

*\* Susan J. Stamm, Counsel, Office of the Children's Lawyer, (416) 314-8037. This case comment represents the opinion of the author and does not represent or embody the official position of The Children's Lawyer or the Ministry of the Attorney General.*

## Capacity Law Working Group

In April of this year, the Executive of the Trusts and Estates Section of the OBA struck a Capacity Law Working Group to discuss members' concerns about Ontario's current capacity laws: the *Substitute Decisions Act, 1992* ("SDA") and the substitute decision making provisions in the *Health Care Consent Act, 1996*.

Shortly after the group was struck, the new Law Commission of Ontario released a consultation paper: *The Law as it Affects Older Adults – Consultation Paper: Shaping the Project*. The Law Commission of Ontario is our province's new law reform commission. The Ontario Bar Association created a working group co-ordinated by Louise Harris of OBA and chaired by Erica James, for the purpose of preparing a response from the organization as a whole to the consultation paper. The Trusts and Estates Capacity Law Working Group decided that its first task would be to provide input to the OBA's submission to the Law Commission of Ontario.

The OBA's eventual submission was lengthy and discussed many areas of the law as it affects older adults, such as employment, pensions, family, human rights and long-term care law. The following is a selective summary of some of the major points about capacity and substitute decision making law included in the submission, as the result of input from our Section's Capacity Law Working Group:

- The concept of capacity is not well understood.
- The court process under the *SDA* is often inappropriate to the circumstances, too costly, too time-consuming and fails to address the real needs of the persons involved.
- There is a lack of availability of alternative dispute resolution processes in capacity and substitute decision making disputes.
- Powers of attorney for personal care are misunderstood and misused.
- The creation of powers of attorney is an unsupervised process, with the scrutiny of such appointments, especially when there is abuse by attorneys, inaccessible, complex, slow and expensive.
- There are not enough capacity assessors in the province and their work is of an inconsistent quality.
- A significant number of *SDA* court applications now involve substitute decision making for incapable adults in "high conflict" family situations, but the framers of the *SDA* apparently did not anticipate conflicts of this degree and type, and the current processes do not lend themselves to timely or appropriate resolutions.
- There is inadequate monitoring of substitute decision makers, including court-appointed guardians.
- Substitute decision makers are inadequately advised about their legal obligations and their duties.
- There needs to be clarification, transparency and other improvements in the process by which statutory guardians are appointed pursuant to the *SDA*.
- As the courts have distinguished between the capacity to marry and the capacity to make a will, and given the effect of marrying on an existing will regardless of capacity, consideration should be given to the interplay of these complex legal principles.

The Capacity Law Working Group will be continuing to meet to review and discuss concerns about Ontario's capacity and substitute decision making laws. Comments and questions from Section members are very welcome. The Working Group members are Jordan Atin, Jan Goddard, Danielle Joel, Jane Martin, Kimberly Whaley and Melanie Yach. A special thanks to Danielle Joel, Melanie Yach and Jan Goddard who variously drafted our submissions to the OBA working group and attended OBA working group meetings.

# Brown Bag Lunch Summary

*Suzana Popovic-Montag\**

We had three Brown Bag Lunches before the summer break and after our last *Deadbeat* summary. The first was held on **April 15, 2008**.

We began with a discussion regarding Powers of Attorney in the context of corporate reorganizations. A particular situation arose in which an incapable person was the sole shareholder of a corporation – the documentation for the corporation's reorganization was signed by the incapable person's Attorney for Property. We discussed whether this was appropriate, given the terms of the *Substitute Decisions Act, 1992*. In particular, we considered whether an officer or director could delegate their authority as an officer/director to their Attorney for Property. It was generally agreed that a grantor could not so delegate, and an Attorney acting for an incapable shareholder should seek appointment as an officer/director of the corporation, before signing off on corporate documents.

A participant raised another fact situation involving a husband acting as the Attorney for Property of his incapable wife. The wife had executed a Will, while competent, naming her husband as her sole beneficiary. A lawyer had acted for both husband and wife. The wife's daughter from a previous marriage now wanted information from the lawyer regarding her mother's estate and the disposition of her assets, as a major commercial asset owned by her mother was being sold at apparently below fair market value. We discussed the ethical issues raised by this scenario, including any obligations by the lawyer and husband (acting as Attorney) to disclose the contents of the Will to the inquiring daughter. We also discussed the Attorney's obligation to become informed regarding the grantor's Will, in order to appropriately deal with the grantor's assets during her lifetime.

Continuing with the theme of Attorneys for Property, a participant noted that financial institutions are increasingly scrutinizing actions of Attorneys. In one case, staff at a financial institution notified an incapable person that his niece was making inquiries into his assets. The incapable person was angered and now wanted to disinherit his niece. It turned out that the niece was the Attorney for Property, and was making reasonable inquiries. It was suggested that if financial institutions have concerns regarding an incapable person and their assets, the Public Guardian and Trustee should be notified. It was noted that some financial institutions insist on meeting personally with a grantor before accepting an Attorney's authority. It was recognized that such a practice could help, but not prevent, all Power of Attorney fraud.

We then discussed an interesting situation involving a beneficiary who refused to complete a s.116 Certificate, based on an active dislike of the Estate Trustee. The refusal was holding up the administration of the Estate. It was suggested that as much information as possible be provided to Canada Revenue Agency, and Canada Revenue Agency could possibly provide guidance as to how to deal with any outstanding tax issues.

We ended our April discussion with another situation involving spouses and reciprocal Powers of Attorney. Each spouse had named the other as their Attorney, with an alternate. The husband became incapable and the wife resigned in favour of the alternatively named Attorney. The alternate Attorney then passed away. At issue was whether the wife could now revoke or reverse her resignation, in order to appoint another Attorney. It is possible that the language of the document appointing the wife (and alternate Attorney) would allow her to appoint another Attorney. It was also suggested that the wife's original resignation may not conform to the stringent requirements of the *Substitute Decisions Act, 1992*. If the wife's original resignation was invalid, then she could likely act and name an alternate Attorney.

We continued our Brown Bag Lunch series on **May 20, 2008**.

A participant raised an enquiry with respect to a situation in which a testator drafted a new Last Will and Testament, but never executed the new Will, possibly because of undue influence. Participants suggested different remedies available to the person who would have had an interest under the new Will if it had been executed and thought possible remedies included a tort action or fraud claim. We also discussed whether that person would have status to challenge the Will that was ultimately submitted for probate.

We then discussed the difficulties of probating a Will when one Estate Trustee refuses to cooperate with another Estate Trustee in applying for a Certificate of Appointment. In this particular situation, there was not enough money in the estate to justify an Application to the Court for directions or to seek other litigation remedies. A caller suggested that the Estate Trustee willing to probate the Will go forth with their Application for a Certificate, write a clear letter to the other Estate Trustee requesting their instructions in writing, and swear an Affidavit in support of their Application for a Certificate explaining the situation.

Continuing with the theme of complex probate Applications, we then discussed a situation in which a participant thought that a beneficiary might have significant mental health issues, but at times be capable. The participant wondered if the Office of the Public Guardian and Trustee should be served with the Application for the Certificate of Appointment and whether this beneficiary could provide a valid Release to the Estate Trustee. A representative from the Office of the Public Guardian and Trustee responded that in this situation it seemed a good idea to contact and serve the Public Guardian and Trustee and include a letter in the notice of Application advising the beneficiaries to contact the Estate Trustee if they have any difficulties.

We then discussed a 2008 Saskatchewan decision, *Re Buckmeyer Estate*, in which an email sent from a testator to the Executor providing instructions with how insurance proceeds should be distributed was accepted as a change of beneficiary designation. This inspired a lively discussion with respect to electronic signatures and the related statutory requirements.

Our attention then turned to elder fraud cases and we discussed the reluctance the police sometimes have to investigate those allegations and lay criminal charges. One caller suggested that notifying the Office of the Public Guardian and Trustee often resulted in stopping the taking of funds, but not necessarily a recovery of those funds. Particular police departments were noted for their eagerness to investigate elder fraud cases, as opposed to others.

We ended our session with an entertaining conversation on how Canada Revenue Agency has reported a 20% drop in revenue collected from the estate administration tax and considered if joint ownership plans may be contributing to this.

Our summer Brown Bag Lunch was then held on **June 18, 2008**.

A participant raised an interesting issue regarding what advice may be provided to a testator disposing of contaminated lands. Here, a testator owned some contaminated land, through a corporation. The named Estate Trustee in such situations may not wish to take on the responsibility of administering and/or disposing of contaminated property. We discussed whether an Estate Trustee was protected by legislation in such cases. The concern was whether any liability of a shareholder for environmental damage would flow to the shareholder's Estate Trustee.

We also discussed demand promissory notes and debated when the limitation period started to run. In the context of estate planning, some participants advised that they are now drafting demand promissory notes with a

proviso that makes them due a few days or so after a demand for payment is made. The argument was that such a proviso meant that demand for payment could not be deemed to have been made at the time of signing of the demand promissory note. We debated whether such a proviso escaped the operation of the two-year limitation period now in effect.

A participant then raised an interesting situation involving a testator that had co-signed a mortgage for another person during his lifetime. The young person had been solely responsible for paying the mortgage. The testator's estate now had little assets to pay the mortgage, if the young person defaulted. We ended our last meeting before the summer break by discussing the legal obligations of the estate and options available to the Estate Trustee to try to release the estate from liability.

\* *Suzana Popovic-Montag, Hull & Hull LLP, (416) 369-1416.*

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## Toronto Estates List Update

Dianne Aziz, Manager of Court Operations for Estates, Civil (Other) and Family has moved to Divisions Head Office in the Corporate Planning Branch as Manager of Strategic Planning. Kim Policelli has assumed the role from Ms. Aziz, pending recruitment for the position.

Mr. Justice David M. Brown is the new lead Judge of the Toronto Estates List, replacing Madam Justice Bonnie Croll. Justice Brown is consulting with members of our Section and the legal community to improve the Estates List. *Deadbeat* will provide updates on this process.

Court Canada continues to expand its services and web technology to maximize the efficiency of the estate litigation process. See [www.courtcanada.com](http://www.courtcanada.com) for more information on its services.

Please contact the Estates List Subcommittee members with any concerns regarding the Estates List in Toronto.

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# Spelling and Grammar Query – the Subjunctive

*Sean Lawler\**

The subjunctive is a verb form that is used when expressing a: condition contrary to fact; supposition; wish; demand; suggestion, or statement of necessity. In those cases, the speaker uses the ‘bare infinitive’ of the verb (i.e., the infinitive without the word “to”). For example, the subjunctive of the verb ‘to go’ is: I go, you go, he/she go (where the usual form is ‘he/she goes’); we/you go; they go.

Only the past tense of the verb ‘to be’ does not follow this rule. In the subjunctive, the verb is conjugated as: I were (instead of ‘was’), you were; he/she were (instead of ‘was’); you/we were; they were.

The examples below help to explain the subjunctive. They are taken from: Bryan A. Garner, *A Dictionary Of Modern American Usage* (New York: Oxford University Press, 1998):

1. Condition contrary to fact: “if I were king”, instead of ‘was king’;
2. Supposition: “If I were to go, I wouldn’t be able to finish the project”, instead of ‘was to go’;
3. Wish: “I wish I were able to play the piano”, instead of ‘was able’;
4. Demand: “I insist that your client pay the money”, instead of “pays”;
5. Suggestion: “I suggest that your client think a little longer about the offer”, instead of ‘thinks’;
6. Statement of necessity: “it’s necessary that the witnesses be there”, instead of ‘are’.

The subjunctive once applied to every type of condition, but such use is now archaic. Garner gives the following example of the incorrect use of the subjunctive: “Its very existence is, therefore, a bulwark against oppression and tyranny, no matter who be the potential oppressor or tyrant”. The correct form is ‘is’.

If you would like us to write about another point of grammar, please send an email to me at [sean.lawler@shibleyrighton.com](mailto:sean.lawler@shibleyrighton.com).

*\* Sean Lawler, Shibley Righton LLP.*

# "Aging Citizens, Evolving Practices": The Canadian Conference on Elder Law

Jan Goddard\*

The fourth annual Canadian Conference on Elder Law will be held November 13 – 15, 2008 in Vancouver, British Columbia. Hosted by the Canadian Centre for Elder Law, this year in conjunction with the International Guardianship Network, this conference will focus on issues of capacity, capability, support, public/private guardian monitoring, accreditation, inter-jurisdictional recognition, mobility, standards and law reform.

This conference always provides an excellent opportunity for elder law practitioners to meet and discuss issues of interest to them and their clients with other practitioners, academics and professionals from other disciplines. It is a collegial, "big tent" style of conference, rich in content and full of networking opportunities.

For more information, see the Canadian Centre for Elder Law's website at [www.ccels.ca](http://www.ccels.ca).

\*Jan Goddard, Jan Goddard & Associates, (416) 928-6685.

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*The articles that appear in this publication represent the opinions of the authors. They do not represent or embody any official position of, or statement by the OBA except where this may be specifically indicated; nor do they attempt to set forth definitive practice standards or to provide legal advice. Precedents and other material contained herein are intended to be used thoughtfully, as nothing in the work relieves readers of their responsibility to consider it in the light of their own professional skill and judgment.*

## Upcoming Programs

Trusts and Estates: Intestacy-Venturing  
Bravely into the Void

October 7, 2008

The Dependents' Support  
Application: from Notice of  
Application to Trial

October 20, 2008

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