

Your Comprehensive Guide to Section 3 Counsel under the *Substitute Decisions Act*

Elder Law/Trusts and Estates Law



Webcast

Date: Monday, October 26, 2020 | 9:00 am - 4:30 pm

Location: Zoom Webinar Only



Program Chairs: **Alexander Procope**, Perez Bryan Procope LLP
Kimberly Whaley, Whaley Estate Litigation Partners

This program contains 0.5 Equality, Diversity and Inclusion Professionalism Hours

This program contains 2 Professionalism Hours

This program contains 4 Substantive Hours

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When an individual's capacity is at issue in a proceeding, it is crucial that they be afforded competent representation. However, challenges abound for counsel representing these clients under section 3 of the *Substitute Decisions Act, 1992*, and those interacting with them. Join our expert faculty to unpack the intricacies, as they guide you through the role of section 3 counsel from when to seek an appointment order to how to determine when the role is at an end. Gather valuable insights and practical advice on navigating the difficult but important role, and walk away with helpful precedents and templates to enhance your practice. Whether you are acting as section 3 counsel yourself, or dealing with counsel who has been appointed under section 3, get the knowledge you need with this essential program.

9:00am	Welcome and Opening Remarks	9:45am	Health Break
9:05am	Introductory Comments Alexander Procope , Perez Bryan Procope LLP Kimberly Whaley , Whaley Estate Litigation Partners <ul style="list-style-type: none"> At what stage of the proceeding should the appointment order be sought? Can/should any relief be granted before section 3 counsel is appointed? 	9:50am	Clarifying the Scope and Limitations on the Role of Section 3 Counsel Marshall Swadron , Swadron Associates <ul style="list-style-type: none"> Reconciling recent court decisions Understanding the role of an advocate
9:15am	When is Capacity "In Issue in a Proceeding"? Felice Kirsh , Schnurr Kirsh Oelbaum Tator LLP Mitchell Rattner , Schnurr Kirsh Oelbaum Tator LLP <ul style="list-style-type: none"> Is capacity always an issue in a power of attorney dispute or guardianship application? What evidence must be presented to make capacity an issue in the proceeding? What evidence must be presented to ensure that capacity is not an issue, and therefore section 3 counsel not appropriate? Are there circumstances where section 3 counsel is not required, despite the fact that capacity is at issue? 	10:20am	Health Break
		10:25am	Navigating Client Management and Professionalism Challenges Angela Casey , Casey & Moss LLP Graham Webb , Executive Director, Advocacy Centre for the Elderly <ul style="list-style-type: none"> Identifying and addressing bias and stereotyping Best practices for taking instructions from a client who is deemed capable, when you are concerned about the client's capacity Protecting confidential/privileged information and assessing consent to disclose Balancing confidentiality and privilege with a client's need or desire to include support people

PROGRAM REGISTRATION IS ONLINE www.oba.org/pd

Questions? pd@oba.org

- Handling conflicts of interest and joint representation
- Dealing with undue influence concerns: red flags to watch out for and how to respond
- Accommodating your client's cognitive disability

11:50am Questions

12:00pm Lunch break with virtual networking

1:00pm **How to Present the Allegedly Incapable**

Client's Position

Bianca La Neve, WeirFoulds LLP

- When is a *Khan* Application appropriate?
- What other options are available to present the client's position, short of an affidavit or oral evidence?
- How to accommodate your client's disability needs in giving evidence

1:25pm **The What, When, Who, Why and How of Capacity Assessments**

Kelley Bryan, Perez Bryan Procope LLP

- How and when can opposing parties seek a capacity assessment of the allegedly incapable person?
- What is the role of section 3 counsel in an assessment?
- Finding the right witness with appropriate expertise
- Instructing the expert
- Analysing the report
- How to challenge capacity assessments

1:50pm Health Break

2:00pm **What is the Role of the Public Guardian and Trustee?**

Sarah Jones, Office of the Public Guardian and Trustee

- Distinguishing the PGT's various roles:
 - In the appointment of section 3 counsel
 - As a party to a guardianship application
 - As a litigation guardian
- When will the PGT recommend section 3 counsel?

2:25pm **Avoiding Negligence Claims and Personal Costs Claims**

Debra Stephens, Tupman & Bloom LLP

- What are the common issues that give rise to negligence claims and costs?
- Best practices to avoid the pitfalls
- When do you need to call LawPro?
- Can you still represent your client when allegations are made against you by another party?

2:55pm Health Break

3:05pm **Bringing a *Habeas Corpus* Application**

Clare Burns, WeirFoulds LLP

- Who to serve and when?
- Essential contents of the Affidavit
- What does the remedy actually get you?

3:30pm **Exploring the Role of Amicus**

Mercedes Perez, Perez Bryan Procope LLP

- How is the role of amicus different to the role of counsel?
- When is amicus appropriate in a proceeding?
- How does amicus get appointed and paid?

3:55pm **Concluding Your Role as Section 3 Counsel**

Jan Goddard, Goddard Gamage LLP

- When is your role at an end?
- How to conclude the retainer
- Getting paid

4:20pm Questions and Concluding Remarks

4:30pm Program Concludes

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\$375.00*	\$525.00*	\$170.00*

**plus applicable taxes*

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300-20 Toronto St. Toronto, ON M5C 2B8 | Toll Free: 1-800-668-8900 | Tel: 416-869-1047 | Fax: 416-642-0424