



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

Date: August 8, 2022

Original Program Chairs:

Alexander Procope, Perez Bryan Procope LLP

Kimberly Whaley, Whaley Estate Litigation Partners

Original program was held on October 26, 2020

AGENDA

Welcome and Opening Remarks from the Program Chairs

Introductory Comments

Alexander Procope, Perez Bryan Procope LLP

Kimberly Whaley, Whaley Estate Litigation Partners

- At what stage of the proceeding should the appointment order be sought? Can/should any relief be granted before section 3 counsel is appointed?

When is Capacity “In Issue in a Proceeding”?

Felice Kirsh, Schnurr Kirsh Oelbaum Tator LLP

Mitchell Rattner, Schnurr Kirsh Oelbaum Tator LLP

- 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?



This program contains:

4h of Substantive Content

2h of Professionalism Content

30m of EDI Professionalism Content

The OBA has been approved as an Accredited Provider of Professionalism Content by The Law Society of Ontario.



OBA CPD **WEBCAST REPLAYS**

ESSENTIAL SESSIONS REBROADCAST – WITH LIVE CHAT



OBA CPD

Clarifying the Scope and Limitations on the Role of Section 3 Counsel

Marshall Swadron, Swadron Associates

- Reconciling recent court decisions
- Understanding the role of an advocate

Navigating Client Management and Professionalism Challenges

Angela Casey, Casey & Moss LLP

Graham Webb, Executive Director, Advocacy Centre for the Elderly

- 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
- 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

Lunch (1 Hour)

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



This program contains:

4h of Substantive Content

2h of Professionalism Content

30m of EDI Professionalism Content

The OBA has been approved as an Accredited Provider of Professionalism Content by The Law Society of Ontario.



OBA CPD **WEBCAST REPLAYS**

ESSENTIAL SESSIONS REBROADCAST – WITH LIVE CHAT



OBA CPD

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

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?

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?

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?



This program contains:

4h of Substantive Content

2h of Professionalism Content

30m of EDI Professionalism Content

The OBA has been approved as an Accredited Provider of Professionalism Content by The Law Society of Ontario.



OBA CPD **WEBCAST REPLAYS**

ESSENTIAL SESSIONS REBROADCAST – WITH LIVE CHAT



OBA CPD

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?

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

Closing Remarks



This program contains:

4h of Substantive Content

2h of Professionalism Content

30m of EDI Professionalism Content

The OBA has been approved as an Accredited Provider of Professionalism Content by The Law Society of Ontario.