

The implications of *Rasouli*:
Are you prepared to advise
on this and other complex
legal issues facing elderly
clients?

Advising the Elderly Client

Key Issues • Best Practices • Practical Approaches

This practical and intensive program will give you an in-depth understanding of the emerging issues impacting this evolving body of law, including:

- The impact of *Rasouli* – what did the Supreme Court of Canada decide and what does it mean for your clients?
- Serving the elderly client: best practices and practical tips
- How do you deal with undue influence leading to will changes?
- Predatory marriages and the test for capacity to marry
- End of life decisions and hearings before the Consent and Capacity Board
- Recognizing the signs of elder abuse and how to prevent it
- How to protect yourself in estate litigation: best practices
- Estate Administration Tax reduction/avoidance
- The impact of remarriage/common law arrangements on prior wills
- Dealing with potential discrimination against seniors
- *Long-Term Care Homes Act* and Regulations: what you need to know
- Retirement home tenancies – hot topics

Plus! Don't miss the Optional Post-Conference Workshop:
Preparing for a Capacity Hearing Before the Consent and Capacity Board

Chairs

Jane E. Meadus, Institutional Advocate & Staff Lawyer, Advocacy Centre for the Elderly
Charles B. Ticker, Barrister & Solicitor



DATES & TIMES

February 19 - 20, 2014
9:00 a.m. - 4:45 p.m. EDT/EST
9:00 a.m. - 3:45 p.m. EDT/EST

OPTIONAL WORKSHOP

February 21, 2014
9:00 a.m. - 12:00 p.m.

LOCATION

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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...

What past attendees said:

“Very informative – learned new information in this increasingly complex world. Validates that we are all struggling with dealing with an aging population.”

“All speakers highly skilled in their respective areas of expertise.”

“Fabulous written material.”

By 2030, 25% of the population in Canada will be over the age of 65. The baby boom generation is moving into its senior years and advising the elderly is an increasing area of practice for lawyers. The growth of this sector is likely to continue along with the complexity of laws/issues surrounding it, as evidenced by the recent Supreme Court of Canada decision in *Rasouli*. As a practitioner or elder client adviser, you need to understand the issues around aging, legal support and infrastructure that affect all elderly clients and their families.

This *Osgoode Professional Development* program was developed to 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. Issues covered will include:

- Educating the client on life planning and estate planning
- Strategies for dealing with conflicts of interest with family members
- Obtaining informed consent in Ontario and obligations of the substitute decision maker
- Deathbed will changes – what should you do?
- Family Law issues, including parental support and access to grandchildren
- Recognizing and preventing abuse of the elderly
- Criteria for refusing admission to, and discharging from, long term care homes
- Resolving potential family disagreements before they happen
- Tenant and Landlord rights under the RTA and RHA

Plus, don't miss the Optional Post-Conference Workshop: *Preparing for a Capacity Hearing Before the Consent and Capacity Board*.

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, Institutional Advocate & Staff Lawyer, Advocacy Centre for the Elderly
Charles B. Ticker, Barrister & Solicitor

Faculty

Gail Crossman, Manager of Investigations
The College of Physicians and Surgeons of Ontario
Elizabeth De Sousa, Investigator, The College of Physicians and Surgeons of Ontario
Mary Jane Dykeman, Dykeman Dewhirst O'Brien LLP
Janina Fogels, Staff Lawyer, Human Rights Legal Support Centre
Nimali Gamage, Goddard Gamage Stephens LLP
Kenneth Hale, Legal Director, Advocacy Centre for Tenants Ontario
Alexander I.M. Henderson, O'ye/Henderson Barristers & Solicitors
Ian Hull, Hull & Hull LLP
Sergeant John Keating, Senior Support Coordinator
Durham Regional Police Service
Judy Kondrat, Legal Services Representative
Human Rights Legal Support Centre
Karen A. Lindsay-Skynner, Barrister & Solicitor
Kevin McCarthy, Manager of Complaints, Professional Conduct Department, College of Nurses of Ontario

Douglas Melville, Ombudsman and Chief Executive Officer
Ombudsman for Banking Services and Investments (OBSI)
Suzana Popovic-Montag, Hull & Hull LLP
Tammy Rankin, Elder Abuse Advisor, Region of Durham
Margaret E. Rintoul, Blaney McMurtry LLP
John Risk, General Counsel, Retirement Homes Regulatory Authority
Lonny J. Rosen, Rosen Sunshine LLP
David Morgan Smith, Hull & Hull LLP
Anita Szigeti, Barrister
Marshall A. Swadron, Swadron Associates
Judith A. Wahl, Executive Director, Advocacy Centre for the Elderly
Graham Webb, Staff Litigation Lawyer, Advocacy Centre for the Elderly
Kimberly A. Whaley, Whaley Estate Litigation
Anna Wyse, Co-ordinator – Complaints, Professional Conduct Department, College of Nurses of Ontario

Agenda

Day One: Wednesday, February 19, 2014

8:30 Registration and Continental Breakfast

9:00 Welcome and Introduction from the Chairs

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

Charles B. Ticker, Barrister & Solicitor

9:10 Serving the Elderly Client: Best Practices and Practical Tips

Nimali Gamage, Goddard Gamage Stephens LLP
Marshall A. Swadron, Swadron 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
- The role of section 3 counsel in representing the elderly
- Ethical and privacy issues

10:00 Key Estate Issues when Dealing with the Elderly

Suzana Popovic-Montag, Hull & Hull LLP

Anita Szigeti, Barrister

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

Family Law Issues

- Parental support
- Access to grandchildren
- Pension claims

Real Estate Issues

- Shared property
- Granny flats and housing
- Life leases

Note: There will be a 15 minute refreshment break.

12:30 Luncheon

1:15 Estate Litigation: Best Practices

Charles B. Ticker, Barrister & Solicitor

David Morgan Smith, Hull & Hull LLP

- Claims against solicitors
 - common problem areas that can expose a lawyer to malpractice claims
- Best practices for navigating the "minefields of an estates practice"
- Remedies available to correct mistakes
- Undue influence
 - the legal parameters
 - the challenges in proving undue influence
 - detecting undue influence at the will drafting stage
- Case law update

2:30 Refreshment Break

2:45 Personal Care Issues: Health Care Consent, Advance Care Planning and End of Life Decisions in the Wake of *Rasouli*

Judith A. Wahl, Executive Director, Advocacy Centre for the Elderly

Lonny J. Rosen, Rosen Sunshine LLP

- Requirements for consent under the *Health Care Consent Act*
- How does Advance Care Planning fit into this scheme?
- Written Advance Care Plans – drafting challenges
- Advance Care Plans and the health practitioner
- Supreme Court of Canada end of life decision in *Rasouli*
 - what did the court decide?
 - how does the Court's decision apply both in and outside of Ontario?
 - what is the process for obtaining informed consent?
 - obligations of the substitute decision maker
 - applications to the Consent and Capacity Board
 - who can apply and when?
 - what limitations are in place?
- Strategies to avoid litigation
- Case law update

Agenda

3:45 Retirement Homes Tenancies: Hot Topics

Kenneth Hale, Legal Director, Advocacy Centre for Tenants Ontario

John Risk, General Counsel, Retirement Homes Regulatory Authority

Judith A. Wahl, Executive Director, Advocacy Centre for the Elderly

Retirement Homes are residential complexes or part of a residential complex that provide accommodation for at least six people, age 65 or older, where the landlord makes available, either directly or indirectly, at least two care services for the tenants. Retirement homes are regulated by both the *Residential Tenancies Act* (RTA) and the *Retirement Homes Act* (RHA). These experts will discuss some of the key legal issues related to this type of housing, including:

- What is in force under the RHA? What is new?
- Implications of the new sections
- Tenant and Landlord rights under the RTA and RHA
- Special evictions under the RTA
- Licensing, inspection and enforcement under the RHA
- Issues related to costs/fees in retirement homes
- Impact of Retirement Home Regulatory Authority orders on licensees and tenants
- Remedies, including litigation, for breaches of both RTA and RHA

4:45 Day One Adjourns

Day Two: Thursday, February 20, 2014

8:30 Continental Breakfast

9:00 Recap and Introduction from the Chairs

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

Charles B. Ticker, Barrister & Solicitor

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

Kimberly A. Whaley, 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 Tax Planning for Estates: You Can't Always Get What You Want

Margaret E. Rintoul, Blaney McMurtry LLP

- Income Tax planning may not answer family issues
 - tax deferred rollovers to a spouse vs. providing for adult children
- Estate Administration Tax reduction/avoidance
 - what to watch for in Alter Ego and Joint Spousal Trusts, and joint holdings
- *Ontario Estate Administration Tax Act* amendments
 - new audit powers and what they may mean to Estate Trustees and their advisors

10:45 Human Rights and the Elderly

Janina Fogels, Staff Lawyer, Human Rights Legal Support Centre

Judy Kondrat, Legal Services Representative
Human Rights Legal Support Centre

Following the changes in 2008, the process for filing complaints about human rights violations means that applicants can directly access the Human Rights Tribunal of Ontario. This session will explore what these changes to the process mean for seniors living in Ontario.

This session will review the human rights system and the work of the Human Rights Legal Support Centre. The presenters will provide some examples of situations where seniors are using or could use the new system to enforce their rights in the context of the challenges that they face.

11:15 Long Term Care Homes Act and Regulations: What You Need to Know

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

Mary Jane Dykeman, Dykeman Dewhirst O'Brien LLP

The *Long-Term Care Homes Act* (the Act) has been in force since July 1, 2010. The Act provides the legislative framework for the provision of care and services to residents of long term care homes. Understanding this is key for both service providers and their legal counsel, as well as lawyers and others advocating on behalf of residents, their substitute decision-makers and families.

Hear from experienced counsel who will discuss the requirements of the Act and its regulations, including:

- Admission to LTC, including:
 - hospitals and alternative level of care patients
 - CCACs role in the process
 - chronic care copayment
 - eligibility for long term care
 - withholding approval for admission
- Overview of services and care in LTCHs
- Inspections, mandatory reporting of abuse and neglect
- Requirements regarding use and limitation of restraints and PASDs

Agenda

- The use of wheelchairs and other personal aids
- Smoking and LTC
- SDM/Family conflict – including care decisions, ability to restrict/limit visits
- Restricting visitors
- Criteria for refusing admission to, and discharging from, LTC

12:15 Luncheon

1:00 Enforcing Patient's Rights Through Regulatory Health Colleges

Kevin McCarthy, Manager of Complaints, Professional Conduct Department, College of Nurses of Ontario

Anna Wyse, Co-ordinator – Complaints, Professional Conduct Department, College of Nurses of Ontario

Gail Crossman, Manager of Investigations, The College of Physicians and Surgeons of Ontario

Elizabeth De Sousa, Investigator, The College of Physicians and Surgeons of Ontario

Responding to concerns and investigating complaints from members of the public and enforcing the standards of practice to protect and serve the public interest is one of the main responsibilities of both the College of Physicians and Surgeons of Ontario (CPSO) and the College of Nurses of Ontario (CNO).

Regulatory experts from both the CPSO and the CNO will walk you through how complaints are initially processed and how matters or concern to the public are addressed and resolved.

1:45 How Advanced Planning Can Avoid Estate Litigation

Ian Hull, Hull & Hull LLP

Family disputes involving money, business succession planning and division of assets can be financially draining on estate assets and divide family members. Conveying the testator's final wishes to beneficiaries and getting beneficiaries to convey their wishes in a family conference can save the legal expenses and family turmoil that could result from beneficiary's changing the will.

Mr. Hull will take you through the process and steps you need to know to resolve potential family disagreements before they happen, including:

- Ensuring the client understands the capacity planning issues
- Communicating the capacity planning phase to those in charge of the assets
- Techniques in conveying the plan to attorneys
- What do you do if there is dissent?

2:15 Refreshment Break

2:30 Recognizing and Preventing Abuse of the Elderly

Graham Webb, Staff Litigation Lawyer, Advocacy Centre for the Elderly

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

Tammy Rankin, Elder Abuse Advisor, Region of Durham Sergeant John Keating, Senior Support Coordinator Durham Regional 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
 - identify 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?
- Dealing with banks and other front-line personnel
- How do you revoke a Power of Attorney?
- Who pays the costs?

3:45 Program Concludes

Optional Workshop

Preparing for a Capacity Hearing Before the Consent and Capacity Board

Friday, February 21, 2014: 9:00 a.m. – 12:00 p.m.

Note: Workshop not available via webcast attendance.

Anita Szigeti, Barrister

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

The definition of capacity in the *Substitute Decision 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
- The impact of the recent Supreme Court of Canada decision in *Rasouli*
- 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.

Registration

Please complete all registrant information.

Understand the unique and evolving issues impacting elder clients

Advising the Elderly Client

Course Course plus Workshop Workshop only

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

(Note: Workshop not available via webcast)

Unable to attend? Please contact us to order the Materials/Program Archive.

Fee Per Delegate

Course only: \$995 plus 13% HST for a total of \$1124.35

Course plus workshop: \$1195 plus 13% HST for a total of \$1350.35

Workshop only: \$300 plus 13% HST for a total of \$339.

Fees include attendance, program materials, continental breakfast, lunch (conference 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.



CPD Credits

LSUC (ON) CPD: 13.0 CPD Hours (9.75 Substantive, 3.25 Professionalism) for the course, 3.0 CPD Hours (3.0 Substantive, 0.0 Professionalism) for the workshop; **BC/Manitoba/Saskatchewan/NWT/Nunavut/Yukon/Quebec/New Brunswick and PEI:** 12.0 CPD/MCLE credit hours towards professional development requirements (2.75 credit hours for the workshop); **NSBS CPD:** 13.0 credit hours for the course (3.0 credit hours for the workshop); **NY CLE Board (on-site participants only):** 14.0 credit hours for the course (3.0 credit hours for the workshop) in the Area of Professional Practice for transitional and non-transitional lawyers. Also 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.

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 \$75 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 2: 9:00 a.m. - 3:45 p.m. EDT/EST

**Optional Workshop: February 21, 2014
9:00 a.m. - 12:00 p.m.**

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

Dress is business casual.

Location

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