

TRUSTS & ESTATES

Fraud, constructive trust and the Bankruptcy and Insolvency Act

B'nai Brith Canada's Trusts & Estates Group will be presenting a continuing professional development program on fraud and its impact on estates and trusts law on June 4, 2013. Fraud is unfortunately very common and lawsuits seeking to recover damages for fraud raise a number of concerns that must be considered over and above whether fraud can be proven in court.

The test for civil fraud is well known. It was articulated by Lord Herschell in the 1889 case of *Peek v. Derry*: "fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false." But what happens if the alleged fraudster has transferred assets out of his or her name to defeat creditors? What happens if the alleged fraudster makes an assignment in bankruptcy?

In the case of a bankruptcy, ordinarily, the scheme of priorities created by the Bankruptcy and Insolvency Act will force a judgment creditor to stand in line with other unsecured creditors.

But this might not be the case if the plaintiff can establish that it is appropriate for the court to impose the equitable remedy of constructive trust. Even in a bankruptcy setting, if the victim of the fraud can establish a proprietary claim to an asset in the bankrupt estate, whether it be real property or money, the court has the discretion to impose a trust over the asset on the basis of fraud thereby removing the asset from the bankruptcy. The claimant will have to pursue this type of claim within the bankruptcy proceeding and abide by all of the statutory requirements for making a claim, but the result may be that the victim recovers his or her assets outside of the bankruptcy and in priority to other creditors of the bankrupt. On June 4, 2013 Gregory Sidlofsky and Brendan Donovan will be addressing these issues in their paper and their seminar presentation.

Sidlofsky is a Certified Specialist in Civil Litigation and a partner at Wagner Sidlofsky LLP. He has represented clients in all levels of court, and was counsel for the successful parties in Credifinance Securities Ltd., Re, 2011

ONCA 160 – a leading case on fraud and the remedial constructive trust in the bankruptcy setting.

Donovan is an associate at Wagner Sidlofsky LLP. Formerly a journalist for Vancouver-based *Stockwatch* and an associate at a



Charles Wagner

full-service firm on Bay Street, Brendan is developing his practice in estates and commercial litigation.

The event will take place on June 4, 2013 at Shaarei Shomayim Synagogue, 470 Glencairn Ave., Toronto, ON, M5N 1V8. Registration is at 7:30 a.m. and the presentations will begin at 8 a.m. sharp. The event is open to lawyers and accountants. Those lawyers and/or accountants who are interested in attending

should contact Anita Bromberg of B'nai Brith Canada at (416) 633-6224 ext. 130 or email abromberg@bnaibrith.ca.

Charles B. Wagner is a partner at Wagner Sidlofsky LLP and is certified by the Law Society of Upper Canada as a specialist in Estates and Trusts Law. His office is a boutique litigation law firm whose practice is focused on estate, commercial and tax litigation.



Gregory Sidlofsky



Brendan Donovan

PRESENTERS



Charles B. Wagner
Wagner Sidlofsky LLP
Chair of B'nai Brith Canada's
Trust & Estate Group



Greg Sidlofsky
Wagner Sidlofsky LLP



Jordan Atin
Hull & Hull LLP



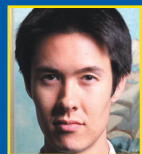
Debra Stephens
Goddard Gamage Stephens LLP



Justin deVries
deVRIES LITIGATION LLP



Rabbi Mordechai Torczyner
Rosh Kollel, YU Kollel, Toronto



Brendan Donovan
Wagner Sidlofsky LLP



Craig Vander Zee
Torkin Manes LLP



Ian Hull
Hull & Hull LLP



Kimberly A. Whaley
Whaley Estate Litigation



Archie Rabinowitz
Dentons Canada LLP

Co-sponsored by

Bank of Nova Scotia Trust Company
Hull & Hull LLP, Wagner Sidlofsky LLP
Whaley Estate Litigation and The Jewish Tribune



Shaarei Shomayim Synagogue • 470 Glencairn Ave. • Toronto

Registration & Breakfast 7:30 am • Program: 8:00 am – 11:00 am

Cost \$90

To register, please contact Anita Bromberg at: 416-633-6224 x130 • abromberg@bnaibrith.ca

This program can be applied towards the annual continuing professional development hours required by the Law Society of Upper Canada

Trop50 drink not Kosher

TORONTO – Tropicana's Trop50 Pomegranate Blueberry drink has been incorrectly labelled as kosher in Canada, according to an alert sent out by Kosher Certifier MK.

Trop50 Juice Beverage with Vitamins – Pomegranate Blueberry, produced for distribution in Canada by Pepsico Beverage & Foods (Tropicana Products) in the US, "erroneously bears the OK Kosher symbol," according to the Kashruth alert. "This product is not kosher."

Corrective measures are being taken to correct this labelling error as responsibly and quickly as possible, the alert said.