

TRUSTS & ESTATES

# When is disappointed heir a defrauded creditor?

As our regular readers already know, the B'nai Brith Canada Trust and Estates Group will be holding a seminar June 4, 2013 on Fraud and Estate Litigation. For the purposes of this column, I want to focus on how lawyers have used the Fraudulent Conveyances Act in the estates and powers of attorney context. While the Fraudulent Conveyances Act is most often used in an insolvency setting – helping the creditor to claw back assets the debtor has spirited away – it has also been used in estate litigation to stop the testator from gifting all of his assets away to defeat a spouse's entitlement under the Family Law Act after the testator's death. Debra Stephens of Goddard Gamage Stephens LLP and Kimberly Whaley of Whaley Estate Litigation will be addressing this fascinating subject as well as others in their paper *When does Estate Planning cross the line and become a Fraudulent Preference?*



**Charles Wagner**

A seminal case in this area is *Stone v. Stone*. In 1995, multimillionaire Harry Stone hatched a plan to ensure that his wife of 24 years Sarah Stone would get very little upon his death. In particular, Harry wanted to make sure that his commercial wealth would go to his children from a prior marriage. The problem for Harry, of course, was the Family Law Act, which lets the surviving spouse seek equalization against the estate in the same way that a spouse might on a divorce.

Harry tried to thwart his wife's rights under the Family Law Act by transferring his assets to his children before he died. The result was that, when Harry passed away on July 21, 1995, there was virtually nothing left in his estate. Essentially, Harry was preventing his wife from exercising her claim under the Family Law Act for an equalization of net family property.

In this case, Ontario Court of Appeal recognized the possibility of using the Fraudulent Conveyances Act to set aside transfers "made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures." In *Stone v. Stone*, the court held that, as a spouse who held rights under the Family Law Act at the time of the fraudulent conveyances, i.e., the right to seek equalization, Sarah was a "creditor or other" within the meaning of the Fraudulent Conveyances Act. Accordingly, Harry's transfers to his kids were declared void and Sarah received an equalization payment of \$851,937.

With 'fraud' being the theme of this CLE event, the B'nai Brith Canada Trust and Estates Group has requested two senior members of the bar, Stephens and Whaley, to address this interesting topic in estate planning and the Fraudulent Conveyances Act.

Stephens is the former Children's Lawyer for the Province in Ontario and now is a partner at Goddard Gamage Stephens LLP. She is a member of the Ontario Bar Association's Family Law and Trusts and Estates Sections and sits on the executive of the OBA Trust and Estate Section, and has served as an adjunct professor at the University of Toronto law school. Stephens's practice focuses primarily on estate, trust and guardianship issues. When litigants seek to place a neutral third party in charge, they often look to her to act as estate trustee during litigation, executor and/or attorney under a power of attorney.

Whaley is a Certified Specialist in Estates and Trusts Law, as well as the founder and principal of Whaley Estate Litigation, rated as one of the top five boutique estates litigation firms in Canada, 2013 by *Canadian Lawyer*. She is past chair of the OBA Trusts & Estates Executive and a current member of the Canadian Bar Association Elder Law Section Executive. Whaley's practice focuses on estate, trusts and capacity issues, and she is also a respected mediator of these types of disputes.

With their experience as estate litigators, solicitors and educators, both are ideally situated to walk fellow practitioners through this difficult and developing area of the law.

The event will take place on June 4, 2013 at Shaarei Shomayim Synagogue, 470 Glencairn Ave., Toronto, Ontario M5N 1V8. Registration is at 7:30 a.m. and 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](mailto: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 & Trusts Law. His office is a boutique litigation law firm whose practice is focused on estate, commercial and tax litigation.



Debra Stephens



Kimberly Whaley

**B'NAI BRITH CANADA**  
**CLE for Lawyers & Accountants**  
**Fraud and Estate Litigation**  
**Tuesday, June 4, 2013**

**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



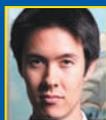
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**Rabbi Mordechai Torczyner**  
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**Ian Hull**  
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**Kimberly A. Whaley**  
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**Archie Rabinowitz**  
 Dentons Canada LLP

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**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](mailto:abromberg@bnaibrith.ca)

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