

## TRUSTS &amp; ESTATES

## Limitation periods and fraudulent concealment

As regular readers of this column undoubtedly know, the B'nai Brith Canada Trust and Estates Group has a seminar scheduled for June 4, 2013. The theme of the seminar is Fraud and Estate Litigation and for this column I want to focus on the question of the impact of fraud and limitation periods in Ontario and claims by beneficiaries. In particular, I want to discuss Ian Hull's and Jordan Atin's paper, which addresses how courts deal with the limitation periods when the rogue fraudulently conceals his behaviour.

Let's start with some simple basics. Ontario's new Limitations Act, which came into effect on Jan. 1, 2004, establishes that there is a basic two-year limitation period to initiate a claim. The clock starts ticking on the earlier date of the claim being discovered or the day on which it was discoverable. Although there are a number of exceptions to the basic two-year rule, the scope of this article does not permit me to review in detail.

At the June 4, 2013 seminar, Hull and Atin will review a number of cases, including the Court of Appeal decision of *Giroux Estate v. Trillium Health Centre*. In that case, a doctor treated a patient for complications arising from a tumour. The patient died in 1999 as a result of complications from cancer. Two years later the family wrote to the hospital with questions regarding the treatment to the patient. The hospital wrote back and told the family that the patient refused the radical treatment recommendations of the doctor. Three years after the patient died, the family asked the College of Physicians and Surgeons of Ontario to review and assess the doctor's treatment of the patient. Those findings were not released until 2003. The legislation prescribes a two-year

limitation period from the date of death for bringing a lawsuit. Three years had passed. The court held that the doctrine of equitable fraud can operate to stay a limitation period because the doctor's and hospital's original response to the family was an attempt to conceal the cause of action and delay the lawsuit and dissuade the family from suing. The bottom line was that the courts do not allow people to fraudulently conceal that there may be a course of action and then rely on a limitation period defence.

As chair of the B'nai Brith Canada Trust and Estates Group, one of our goals is to ensure that those professionals servicing our community have the best continuing legal education for issues of importance. Running afoul of limitation periods is of prime importance because even if a plaintiff is a 100 per cent right and entitled to substantial damages, starting a lawsuit after the expiry of a limitation period means that the plaintiff's claim will be statute barred. They will then have a lawsuit against their lawyer who missed the limitation period. It is for that reason that the committee chose Hull and Atin, two of the most senior practitioners in the area, to address this issue of fundamental importance.

Hull is a co-founder of Hull & Hull LLP with his late father, Rodney Hull. He is a certified specialist in Estate and Trust law. His seminal text *McDonald Sheard Hull Probate Practice* is often quoted by judges as authority of the state of the law. He has earned the respect of his peers both as a litigator and mediator, and arguably one of the best business decisions he ever made was to retain Atin as counsel to Hull & Hull LLP.

Jordan has been ranked by LEXPERT as one of the best lawyers in Canada. He too is a certified specialist in Estates and Trust law and acts as a solicitor as well as mediate through Hull Estate Mediation Inc. A past chair of the Ontario Bar Association Estate



Charles Wagner

section, a recipient of the Hoffstein Prize recognizing his achievements in estate law gives the reader a glimpse of his expertise.

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](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.



Ian Hull



Jordan Atin

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## CLE for Lawyers &amp; 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



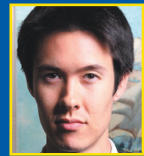
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**Ian Hull**  
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**Kimberly A. Whaley**  
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**Archie Rabinowitz**  
Dentons Canada LLP

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](mailto:abromberg@bnaibrith.ca)

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