

World Study Group on Elder Law 2010

**Thursday, October 28, 2010
10:30 a.m. to 4:30 p.m.**

Delta Chelsea Hotel, Toronto, Ontario, Canada

Tentative Agenda

9:30-10:30 Registration

10:30-10:40 Welcome & Introduction of Participants
Laura Watts, National Director, Canadian Centre for Elder Law

10:40-11:20 Perceptions of Guardianship
Professor Doug Surtees, College of Law, University of Saskatchewan

Professor Surtees recently completed a research project into the effectiveness of Saskatchewan's guardianship and co-decision-making legislation. As part of his research, he conducted a survey of lawyers and guardians/co-decision-makers who had participated in the process. The purpose of these surveys was to gauge the respondent's views towards the guardianship/co-decision-making process they had participated in. The results indicate a wide array of attitudes and a variety of understandings of the process. While it is clear that most applications hire a lawyer to assist them with the application process, it appears the fees charged by lawyers for apparently the same services vary dramatically. In addition, some participants felt applicants should seek more powers than appropriate under the legislation. Professor Surtees' presentation explores some of these varying perceptions of lawyers and guardian/co-decision-makers involved in the guardianship/co-decision-making process.

11:20-12:00 Financial Abuse, Neglect and the Power of Attorney
Kimberly Whaley, Managing Partner, Whaley Estate Litigation
Ian Hull, Founder, Hull & Hull LLP

While a Power of Attorney document (the "POA") can be used for the good of a vulnerable adult or an incapable person, there can be a dark side to what is in fact a very powerful and far-reaching document. More often than not it becomes apparent that the grantor of such a document never put their mind to just what the powers are that are being bestowed, nor the ability of the chosen attorney to do the job and fulfill their duties or whether that attorney can truly be trusted to act in an honest and trustworthy manner. As a result of the

foregoing, there is an extremely high risk that a vulnerable older adult or incapable person may fall victim to abuse as a result of having a POA. Although a somewhat bleak assumption, given the many cases of abuse that come in and out of our offices, in our estimation there is very likely a high number of attorney-inflicted abuse cases that simply go unmonitored or unnoticed by our legal system. Through a discussion of the relevant case law, this presentation will expose some particular ways in which POAs can lead to financial abuse and neglect of older adults. A discussion of the ways in which such abuse or neglect can be prevented will follow.

12:00-1:00 **Lunch**

1:00-1:40 **Exacerbated by Success: Consumer Fraud and the Incomplete Integration of North American Financial Systems**

Professor Mark Bauer, Stetson University College of Law

While the creation of the EU was seen as a beginning rather than an end, NAFTA was quite the opposite. Opening our borders and financial systems to all North Americans has improved our economics, but created fertile ground for cross-border consumer fraud, particularly aimed at senior citizens. This on-going project considers the problem and suggests reform.

1:40-2:20 **Has the Time Come for an Elder Rights Movement?**
Professor Nina Kohn, College of Law, Syracuse University

Professor Kohn's talk will be based on a new article that argues that older adults experience significant civil rights problems, and that the current approach to old-age advocacy is fundamentally ill-suited to address these problems. It posits that an elder rights movement is an appropriate vehicle to address these concerns. It then shows how lawyers can play a critical role in helping such a movement to emerge. Specifically, it posits that the legal community could help foster an elder rights movement by reframing key elder law concerns as civil rights concerns, and engaging in and with "cause lawyering" activities.

2:20-2:40 **Ageism and the Justice System: Features of Ageism**
Helene Wheeler, LL.M. Candidate, UBC Faculty of Law

Ms. Wheeler's research considers whether the justice system is ageist. It will evaluate some of the law based aspects of the justice system, including age distinctions in the law; age discrimination in the law; the uneven application of a law; and the language used in judgments to determine if any of them suggest negative stereotypes about older persons. It will also look at some of the institutional aspects of the justice including public legal education, financial costs of litigation, and community services to see if any of these aspects of the justice system create functional barriers to the participation of older adults. Taking a

holistic view of the justice system through the eyes of the elder litigant uncovers that there are improvements that could be made to assist in the participation of this growing segment of society in the justice system.

2:40-3:00 **Break**

3:00-3:40 **The Debate Around the Need for an International Convention on the Rights of Older Persons**
Dr. Israel Doron, Senior Lecturer, University of Haifa

In recent years, there has been a growing interest and debate around the question of whether there is a need for an international convention on the rights of older persons. The debate around this question is far from simple or consensual. Although there are strong voices in favour, there are also strong arguments against. Moreover, the mere fact that a legal gap exists at the international level is not a sufficient reason for the advancement of a new convention. Hence, the goal of this presentation will be not only to provide a detailed analysis of the arguments in support and against such a convention but also to propose some specific recommendations for the advancement of such a convention in the future.

3:40-4:20 **Moving Towards an International Lens of Elder Rights Issues**
Dr. Jane Barratt, Secretary General, International Federation on Ageing
Laura Watts, National Director, Canadian Centre for Elder Law

4:20-4:30 **Wrap Up**

5:00-7:00 **Red Shoe Reception**
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