

WHALEY

ESTATE LITIGATION



KIMBERLY ANN WHALEY, C.S., TEP., LLM

Designated as a Certified Specialist in Estates and Trusts Law by the Law Society of Upper Canada, October, 2006



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Kimberly A. Whaley is the founder and principal of the law firm, Whaley Estate Litigation. Her practice is restricted to the litigation and mediation of estate, trust and capacity proceedings. She is also a solicitor of the Supreme Court of England and Wales (non-practising).

Kimberly was designated as a Certified Specialist in Estates and Trusts Law by the Law Society of Upper Canada in 2006. She has been peer rated and listed by The Best Lawyers in Canada in the speciality of Estates and Trusts (2009, 2010, 2011, 2012). Kimberly was chosen by Lawday Leading Lawyers as one of the top 60 leading lawyers in Canada in Estates and Trusts in the year 2009.

Kimberly is Past-Chair of the OBA Trusts & Estates Executive, and is currently a member of the CBA Elder Law Section Executive. She is a registered member of the Society of Trusts and Estates Practitioners (STEP) (worldwide) and is on the STEP (Toronto) Executive as Program Chair. Kimberly is a committee member of The Professional Advisory Group of the Baycrest Foundation. Kimberly is a member of the Estate Planning Council of Toronto and the Expert Advisory Group for the Law Commission of Ontario. Kimberly is on the Estate List Users Committee of Ontario (OSCJ at Toronto).

Kimberly co-mediates with her mediation partner, Brian Wilson at estatemediators.ca

Kimberly is a co-contributor to the yearly Canada Law Book publication "*Key Developments in Estate and Trust Law in Ontario*" (2008, 2009, 2010, 2011, 2012 Editions) and authors the chapter "*Passings of Accounts, including Contested Passings*".

Kimberly authored the Canada Law Book publication "*Capacity to Marry and the Estate Plan*" in 2010, with co-authors: Dr. Michel Silberfeld, Heather McGee and Helena Likwornik.

Kimberly has authored the following published articles:

- Estates and Trusts Pension Journal: "*The Use of DNA in Contested Estate Matters*", E.T. & P.J. Vol. 23, 2004 No. 2
- Estates, Trusts and Pensions Journal: "*Powers of Attorney and Financial Abuse*" Vol. 27, 2008, No. 4
- Estates and Trusts Pension Journal: "*Life after Death: Modern Genetics and the Estate Claim*", Vol. 28, 2009

Kimberly was awarded the Hoffstein Book Prize Award in 2009, recognizing contributions and achievements by Members of the OBA in the area of Wills, Trusts and Estates.

Kimberly has taught at Queen's University and the University of Toronto, as well as Osgoode, and contributes to Continuing Legal Education programs for lawyers, in-house at financial institutions, hospitals and other organizations.

Kimberly is the Mom of Sammi, age 13, and runs marathons in her spare time!

LEGAL EMPLOYMENT HISTORY

- Whaley Estate Litigation, founder and principal -- Estate, Trust, Capacity, Power of Attorney, Fiduciary, Elder Law, Litigation and Mediation, [May 2006 - Present]
- Dickson MacGregor Appell LLP, Partner -- Estate, Trust and Capacity Litigation [from Sept. 2001]
- Hull & Hull, Associate -- Estate Trust and Capacity Litigation [2000 - 2001]
- Borden & Elliot, Associate -- Corporate Law [1998 - 1999]
- Beale and Company, Solicitors, London, England -- Litigation - Commercial, Financial, Construction, [1995 - 1998]
- International Human Rights Law Group, Washington D.C., Legal Intern -- Affiliated with UNESCO, OAU and the International Commission of Jurists; Country-specific fact-finding research; Management of UN documents; Assistant on UNESCO and UN Arbitrary Working Group cases; Advocate Human Rights issues before Congressional End State Policymakers, [June - October 1993]
- Allen & Overy, Solicitors, London, England -- Banking and Property Law, [1993]

RECOGNITION

- Lawday Leading Lawyers Directory -- Rated as one of top 60 leading lawyers in Canada in the practice area of Estates and Trusts, [2012, 2011, 2010, 2009]
- Peer-rated and Listed in the 'Best Lawyers in Canada' in the specialty of Trusts and Estates, [2010, 2009, 2008]
- Recipient of the Hoffstein Book Prize Award, recognizing contributions and achievements by members of the OBA in the area of Wills, Trusts and Estates [2009]
- Certified by the Law Society of Upper Canada as a Certified Specialist in Estates and Trusts Laws (Estate Litigation), [2006]
- Recipient, Teaching Award, Queens University, [2003]

EDUCATION AND QUALIFICATIONS

- Institute for Conflict Management, Santa Monica, California -- Mediation Certification [2008]
- Osgoode Hall Law School, York University - Essential Curriculum in Trusts, Wills and Estates - Focus on Estate Litigation, [2000]
- Ontario Call to the Bar, [February 1999]
- Ontario Bar Admissions Course -- Phase Three, Abridgement of Articles, [1998]
- National Committee on Accreditation, Canada -- Certificate of Qualification -- Tax and Constitutional Law, [1998]
- Cambridge University, College of Law, England -- Diploma in Professional Skills (Cantab.) -- Accounts; Professional Conduct; Personal Work Management, Advocacy, Investment Business, [1995 - 1997]

- University of Bristol, England -- Diploma in Legal Practice (with Commendation), [Sept. 1994 - June 1995]
- Nottingham Law School, England -- Diploma in Law, Common Professional Examinations (LLB), [Sept. 1992 - June 1994]
- University of Bristol, England -- Masters of International Law (LLM), [Sept. 1991 - Sept. 1992]
- University of Exeter, England -- LLB, [Sept. 1989 - June 1990]
- University of Western Ontario, Canada -- BA, Political Science Major, English Minor, [Sept. 1984 - April 1988]
- Bishop Strachan School, Canada -- Ontario Secondary School Honours Graduation Diploma, (OSSHG), [Sept. 1979 - June 1984]

MEMBERSHIPS AND PROFESSIONAL AFFILIATIONS

- Past Chair, OBA, Trust and Estates Executive
- Executive Member, CBA Elder Law Executive
- Member, Law Society of Upper Canada
- Member, Canadian and Ontario Bar Associations
- Member, Toronto Lawyers Association
- Full Member, Society of Trust and Estate Practitioners Worldwide
- Executive Member, STEP, Toronto Branch – Program Chair
- Member, Estate Planning Council of Toronto
- Member, Professional Advisory Group of the Baycrest Foundation
- Member, Expert Advisory Group for the Law Commission of Ontario (OSCJ at Toronto)
- Member, Estate List Users Committee
- Trusts & Estates Executive Bench and Bar Liaison, [2006 - 2010]
- Member, OBA, Civil Litigation Section
- Executive Member (Past), OBA, Young Lawyers Division (YLD)
- Executive Member (Past), OBA, CLE Main Committee
- Executive Member, (Past), OBA, Annual Institute Review Committee, [2005 - 2009]
- Member, Advocates' Society
- Member, Advocacy Centre for the Elderly (ACE)
- Counsel (Past), Senior Peoples' Resources in North Toronto Inc. (SPRINT)
- Member, National Academy of Elder Law Attorneys (NAELA), Tucson, Arizona

LECTURER

- Queens University Sessional/Adjunct Professor, Appellate Advocacy, [2003 - 2007], **Recipient Teaching Award, Fall 2003*
- University of Toronto -- Wills and Estate Planning, Academic Year 2005
- University of Toronto -- Transmission of Wealth, Academic Year 2006
- LSUC/Osgoode Ontario Bar Admissions Course -- Trusts, Estate Planning
- LSUC, Continuing Legal Education Programs
- OBA, Continuing Legal Education Programs
- Queens University, Faculty of Law, Guest Lecturer -- Estate Litigation
- Ryerson University, Mini Law School -- Estate Litigation, [2004]
- Retirement Planning Association of Canada (RPAC), In-House Banking Institutions

PUBLICATIONS | SPEAKER | PRESENTER | CHAIR

- Speaker, National Academy of Elder Law Attorneys, Inc. – Capacity Litigation and Cross Border Capacity Issues, [April 25-28, 2012]
- Six Minute Lawyers -- "*Disputes Over What Remains: Bodies, Burial, Ashes, and New Developments*", [April 24, 2012]
- Contributing Author to the yearly Canada Law Book publication "*Key Developments in Estate and Trust Law in Ontario*" (2011 Edition) and authors the chapter "*Passing of Accounts*" [June 2011]
- Speaker, OBA Institute: Capacity – Capacity to Marry, Divorce and Separate, [February 9-10, 2012]
- Speaker, Osgoode Professional Development – Advising the Elderly, [February 15-16, 2012]
- Speaker, 14th Annual Estates and Trusts Summit, [November 9, 2011]
- Chair, LSUC Practice Gems – Avoiding the Pitfalls – The administration of Estates 2011, [October 31, 2011]
- Chair, OBA – Elder Abuse, [October 26, 2011]
- Speaker, Ontario Tax Conference 2011 – Keeping Tax Practitioners Informed – Estate Planning – Litigation arising out of Estate Planning, [October 24-25, 2011]
- Chair, STEP Seminar – Mistakes and Rectification, Taxes, Wills, Estates – 75(2) Tainted Spousal Trusts in Trust and Estate Context, [September 22, 2011]
- Chair, LSUC Practice Gems --The Administration of Estates Program – Avoiding the Pitfalls, [September 14, 2011]
- Presenter, St. Michael's Hospital: Powers of Attorney, [May 31, 2011]
- Co-presenting, STEP Ottawa Seminar -- Advocating the Rights of Older Clients, [May 18, 2011].

- B'nai Brith Lawyer's Division, Legal Education Seminar: Financial Predators and the Elderly -- Mock Court Format, [Monday, May 16, 2011]
- Presenter, LSUC: Continuing Professional Development (CPD) program: The Six-Minute Estates Lawyer 2011: "*Predatory Marriages*", [April 27, 2011].
- Co-Chair, STEP Canada - PGT / Children's Lawyer, [April 5, 2011].
- Presenter, OBA -- COSTS: Discretion, Proportionality, Access to Justice, and other Considerations, [February 3, 2011]
- Presenter, Osgoode Professional Development, Conference on Advising the Elderly Client: Remarriages and Common Law Arrangements: Estate Claims, [January 18, 2011]
- Presenter, LSUC: Annual Estates and Trusts Summit, [November 18, 2010]
- Presenter, Canadian Centre for Elder Law, [October, 2010]
- Chair, OBA -- Trust Trustee Trusteeship 2010, [October 1, 2010]
- Presenter, LSUC -- Drafting and Administering Powers of Attorney for Personal Care and Property, 2010, [September 16, 2010]
- Presenter, CBA, Canadian Legal Conference and Expo, 2010, Niagara, Ontario -- "*Capacity to Marry*", [August 15-17, 2010]
- Presenter, World Elder Abuse Awareness Day (WEAAD) -- "*Powers of Attorneys and Substitute Decision Making: Friends or Foes for Preventing Elder Abuse*", [June 15, 2010]
- Facilitator, Advanced Roundtable in Estates 2010 -- "*Duties and Competencies of Estate Trustees and Other Fiduciaries in Uncertain Economic Times*", [May 17, 2010]
- STEP Canada -- "*Advocates of the Rights of Older People: Protecting and Advising your Client Where Aging and Capacity are at Issue: Is it Time to Adapt your Practice to Better Accommodate your Emerging Client?*", [April 13, 2010]
- Presenter, Institute of Law Clerks of Ontario -- "*The Dead and Depressed*"; "*Family Law Act Election and the Estate Claim*", [March 23, 2010]
- OBA -- Trust, Trustee, Trusteeship, 2010
- Presenter, OBA, Joint Trust and Estates and YLD: "*Primer on Estate Litigation*", Costs: Who pays the costs in Estate Litigation? -- Update on Costs, [December 9, 2009]
- Presenter, LSUC 12th Annual Estates and Trusts Summit: "*Remedies for Non-Compliance with Court Orders*", [November 13, 2009]
- Law Society of Upper Canada -- "*Succession Planning for Your Practice*", [May 20, 2009]
- STEP Program -- "*The Litigator's Perspective on Powers of Attorney: What Advisors and their Clients should know about Granting and Implementing Powers of Attorney*", [April 22, 2009]
- Six Minute Lawyers -- "*The Body, Ashes and Exhumation*", [April 6, 2009]
- Deadbeat -- *Re Drago Barbulov v. Dr. R. Cirone*, [April 2009]

- OBA Estates and Trusts -- *Willful and Wantin' Estates Practice in the First Half of the 21st Century, "Power of Attorney Panelist"*, [February 2009]
- Baycrest Foundation Seminar -- "*The Elderly and Power of Attorney Fraud*", [November 26, 2008]
- Law Society of Upper Canada, 11th Annual Estates and Trusts Summit, [November 19-20, 2008]
- The Canadian Centre for Elder Law -- A Division of the British Columbia Law Institute, 4th Annual Canadian (International) Conference of Elder Law Issues, "*Aging Citizens, Evolving Practices*" -- "*Getting to Guardianship*", [November 13-15, 2008]
- Dependant's Support, OBA Conference Centre, "*Using Annuity and Insurance Contracts to Settle Disputes*", Kimberly A. Whaley and Glenn Davis, [October 20, 2008]
- Law Society of Upper Canada, Practice Gems -- "*The Administration of Estates, Avoiding the Pitfalls -- Applications for Advice and Direction*", [October 6, 2008]
- Program Chair, Year III - Trust, Trustees, Trusteeship III: *All you Need to Know and More*, OBA Conference Centre, [September 23, 2008]
- Estates, Trusts and Pensions Journal, "*Powers of Attorney and Financial Abuse*", Volume 27, Number 4, [September 2008]
- Contributing Author to the yearly Canada Law Book publication "*Key Developments in Estate and Trust Law in Ontario*" (2008, 2009, 2010 Editions) and authors the chapter "*Passings of Accounts, including Contested Passings*" [June 2008, 2009, 2010]
- Deadbeat -- Trusts and Estates Section, Volume 26, No. 4 -- *De Zorzi Estate v. Read*, 2008 WL 673479 (Ont. S.C.J.) 2008 CarswellOnt 1330, [May 2008]
- Righting Wills IV, OBA Conference Centre -- "*Deceptively Simple: Powers of Attorney, Their Drafting, Their Impact*", Kimberly A. Whaley and Jan Goddard, [May 14, 2008]
- The Six-Minute Estates Lawyer 2008, The Law Society of Upper Canada "*The Passing of Fiduciary Accounts and Recent Court Treatment of Compensation, Care and Management, and Special Fee Claims*", [April 8, 2008]
- Power of Attorney Fraud, [March 25, 2008]
- Retirement Planning Association of Canada -- "*Litigation Issues and Power of Attorney Disasters: Avoiding Conflict in Litigation*", [March 2008]
- Briefly Speaking, March 2008, Volume 33, N. 2, pages 4, 5, [March 2008]
- The Law Times, Vol. 19, No. 4: "*Focus on Family Law Trusts and Estates*", Page 12, [February 4, 2008]
- OBA, Annual Institute: "*Genetics and the Estate Claim*", [February 2, 4, 5, 2008]
- "*Litigation Issues and Power of Attorney Disasters: Avoiding Conflict in Litigation*", presented at the Retirement Planning Association of Canada (RPAC) Ontario South Education Day, [November 16, 2007]
- Vancouver Elder Law: Moving Forward, Moving Beyond, "*Power of Attorney Litigation Issues -- Misuses and Abuses*" [November 8, 2007]
- Co-Speaker, with Professor Lionel Smith -- LSUC, Estates and Trust, 10th Annual Summit: "*The Measurement of Compensation Claims against Trustees and Fiduciaries*", [November 5, 2007]
- OBA, Constructive Trusts and Resulting Trusts 2007: *Bringing Order to Chaos*, [October 19, 2007]

- CLE, Thunder Bay, Estate Litigation, [October 18, 2007]
- Fall OBA Section Executive Program: *Power of Attorney and Fraud*, [September 27, 2007]
- OBA, Trust, Trustees, Trusteeship II -- *All You Need to Know and More*, [September 24, 2007]
- Society of Trust and Estate Practitioners (STEP) Canada, 9th Annual Conference: Practitioners Update: *The Future of Estate Planning: Capacity Concerns; Case Law Update; Privacy Issues*, [June 7, 2007]
- OBA, Kissing Cousins II Revisited: Family and Estate Law -- Keeping up with the Joneses: A Case Study -- "*Desirous Dependants: The Case for Support from the Estate*", [June 4, 2007]
- OBA, Kingston, Righting Wills -- Essential Tips for Practitioners: *Solicitor's Negligence in the 21st Century: A Trustee and Estates Perspective*, [April 16, 2007]
- LSUC, The Six-Minute Estate Lawyer 2007: *Solicitor's Negligence*, [April 10, 2007]
- OBA, Section Passport -- *Dinner with Your Honourable Estate List Justices*, [March 27, 2007]
- STEP Annual Conference -- *Tax Law Update for Estate and Trust Practitioners*, [February 27, 2007]
- OBA, Annual Institute: *Gone...But Not Forgotten*, [February 5-6, 2007]
- OBA, Section Passport -- *The A-Z of Trust Law*, [November 28, 2006]
- Estate Planning Council Group, Markham: *Upsetting the Apple Cart -- How Dependants and Others Can Make Claims to Upset Your Estate Plan*, [November 8, 2006]
- LSUC, 9th Annual Estates and Trusts Summit: *Risk Management Issues: Confidentiality, Privilege, Conflicts and Retainer Letters*, [November 3, 2006]
- OBA, Section Passport -- *Challenges and Implications of Transferring "Property"*, [October 24, 2006]
- OBA, Death Takes A Client: *Your First Estate Administration: Top Dos and Don'ts in Challenging Situations*, [October 19, 2006]
- OBA, Section Passport -- *Solicitor's Negligence*, [September 26, 2006]
- OBA, Trusts, Trustees, Trusteeships -- "*All You Need to Know and More...*", [September 18, 2006]
- OBA, Kissing Cousins II: *Desirous Dependants, The Case for Support from the Estate*, [June 12, 2006]
- LSUC, Estate Administration for Law Clerks: *Letters of Wishes*, [June 9, 2006]
- OBA, Annual Year-End Dinner and Awards Presentation, Elena Hoffstein, [June 7, 2006]
- LSUC, Solo and Small Firm Conference and Expo: *The Best of Wills and Estates CLE*, [May 12, 2006]
- OBA, Section Passport -- *Our Honourable Estate List Judges have the Opportunity to Tell You What You Could be Doing Better*, [April 25, 2006]
- In-House Seminar, CIBC Legal: Litigation Issues and Update -- *Power of Attorney Disasters*, [April 20, 2006]
- LSUC, The Six-Minute Estates Lawyer 2006: *Memoranda of Wishes*, [March 22, 2006]

- OBA, Section Passport -- *Tax Law Update for Will and Estate Planners and Administrators*, [February 16, 2006]
- OBA, 2006 Institute Trusts and Estates -- *Dead, Gone, but the Fight Goes on... or Does it?*, [January 23, 2006]
- OBA, Section Passport -- *Removal of Estate Trustees*, [November 21, 2005]
- YLD: Top Ten Will Drafting Tips and Traps, [November 9, 2005]
- OBA, Section Passport -- *Challenges to Powers of Attorney*, [October 25, 2005]
- OBA, Righting Wills III, Essential Tips for Practitioners: *Solicitors Negligence in the 21st Century -- An Application of White v. Jones*, [October 6, 2005]
- OBA, Section Passport -- *Solicitor's Negligence and Your Insurer -- LawPro*, [September 25, 2005]
- OBA, Elder Law Conference -- Planning for Legal Life: *Legal Financial and Social Challenges of Aging Program -- Litigation Issues and Update -- Power of Attorney Disasters Avoiding Conflict and Litigation*; paper updated, [May 13-14, 2005]
- OBA -- *Using Spousal Trusts - Tips and Traps*, [January 27, 2005]
- Ontario Editorial Correspondent for the Canada STEP INSIDE Newsletter, [2005]
- OBA -- Presentation of the OBA Award of Excellence, Speaker -- *DNA in Contested Estate Planning*, [November 16, 2004]
- LSUC, Estates Planning for your Practice: *Protect Your Clients, Safeguard Your Estate*, [September 14, 2004]
- OBA, YLD -- *Estates and Trusts Conundrums in Cognition, Legal Issues in Capacity*, [May 17, 2004]
- Estates and Trusts Pension Journal: *The Use of DNA in Contested Estate Matters*, E.T. & P.J. Volume 23, Number 2, April 2004, page 140 [April 2004]
- OBA Trusts and Estates -- *Estates Practice and the "New Limitations Act, 2002" Effective January 1, 2004*, [January 16, 2004]
- LSUC 6th Annual Estates and Trusts Forum: *"Powers of Attorney"*, [November 19, 2003]
- OBA Estate Litigation/Don't Draft Without It: Pleading, Preparing and Proving Your Client's Case: *"Challenges to the Validity of the Will"*, [September 15, 2003]
- CALU Magazine, 2003, Vol. 3: RRSP: Recent Cases -- *Amherst Crane Renta Ltd. v. Perring*, 2002, 46 E.T.R.(2d) 1; *Bramley v. Bramley Estate* [2003] B.C.J. No. 457, [September 2003]
- OBA, Estates -- Their Creation and Administration -- Present and Future: *Litigation Issues -- Power of Attorney Disasters -- Avoiding Conflict in Litigation*, [June 2, 2003]
- *Hall v. Bennett Estate* -- Will Power Issue #102, [June 2003]
- STEP 5th National Conference, Toronto: *"A Review of Two Recent Appeal Cases"*, [June 16-17, 2003]
- OBA, *"Litigation Issues and Update, Power of Attorney Disasters, Avoiding Conflicts in Litigation"*, [May 2003]
- OBA, ADR -- *"Estate Mediation: A Pound of Prevention"*, [March 21, 2003]
- OBA, Trusts and Estates: *"Top 10 Litigation Issues -- 2002 Ontario Case Law Review"*, [January 14, 2003]

- "A Will: Don't Shuffle Off this Mortal Coil Without One", Toronto Star, [January 12, 2003]
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- LSUC, Estates and Trusts Forum, Fifth Annual: *The Use of DNA in Contested Estate Matters*, [November 21, 2002]
- OBA (Updated November 23 for OBA), "*The Use of DNA in Contested Estate Proceedings*", [November 2002]
- "*Precatory Memoranda*" -- Will Power Issue #85, [January 2002]
- Precatory Memorandums -- *Are they legally binding? Should they be disclosed? What are the Courts Saying?* -- Will Power 85, [January 2002]
- Chair of OBA Trust and Estates Section Program Passport Series; Case Comment and Speaker, [2002 - 2008]
- Hull and Hull Breakfast Series, [2002]