



January 2015 - Vol. 2 No. 1

Message From The Chair, STEP Toronto



Happy New Year to our members, from the STEP Toronto Executive.

Since our last "Connection", we had the 2nd annual seasonal event on December 9th, in the spectacular venue at the 68th Floor of the BMO offices on King Street.

The event was attended by about 120 members and was supported by both Sick Kids Foundation and BMO Financial Group. Live music was performed by "Oui B Jamon". Thanks to all for supporting this event.

If there are any members of STEP Toronto who wish to put their name forward for consideration as an executive member, or officer, we invite you to make your interest known.

We welcome your submission of articles for our Newsletter. Please submit articles to one of our Newsletter Committee Members for consideration: Ted Polci at: tedp@fyork.com, Elaine Blades at: elaine.blades@scotiaprivateclient.com, Paul Keul at: paul.keul@scpllp.com, Marina Panourgias at: mpanourgias@deloitte.ca, or Joan Jung at: jjung@mindengross.com.

As ever, should you wish to share any ideas or initiatives with your STEP Executive, or learn how to be a more active STEP member, please contact myself or a member of the Executive.

With Warm Wishes for the New Year,

Kimberly A. Whaley, CS, TEP, LLM
Whaley Estate Litigation, Chair STEP Toronto Executive

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About Connection

STEP Toronto Executive

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Rachel Blumenfeld

Chris Delaney

Daniel Dochylo

Jeff Halpern

Elena Hoffstein

Harris Jones

Joan Jung

Gillian Musk

Corina Weigl

STEP Toronto Presents...

January 14, 2015 – Guardianships: Dealing with Minors and Adults under Disability

Those who are unable to manage their own finances and care and who are not capable of making their own financial or personal care decisions are vulnerable and susceptible to abuse. Guardianship is one means, often a choice of last resort, to manage the affairs of those under disability including by definition minor children. There are two government Offices in Ontario, both within the jurisdiction of the Ministry of the Attorney General, who are responsible for the safeguarding of the personal and financial interests of those under disability: the Offices of the Children’s Lawyer and of the Public Guardian and Trustee.

Please join us as **Steve Adams**, Superior Court of Justice, **Kenneth Goodman**, The Public Guardian and Trustee, **Linda Waxman**, Office of the Children’s Lawyer and **Kimberly Whaley**, Whaley Estate Litigation, provide an overview of guardianship respecting minors and adults under disability as well as the jurisdiction and role of the Public Guardian and Trustee, the Children’s Lawyer, and the Accountant of the Ontario Superior Court of Justice.

Program Details

Moderator: **Craig Vander Zee**, LLB, TEP: Torkin Manes LLP

Speakers: **Steve Adams**, Comptroller and Accountant of the Superior Court of Justice
Kenneth Goodman, LLB: The Public Guardian and Trustee
Linda Waxman, Legal Director, Office of the Children’s Lawyer, Ministry of Attorney General
Kimberly Whaley, CS, LLM, TEP: Whaley Estate Litigation

Registration: **2:30 p.m.**

Seminar: **3:00 p.m. – 5:00 p.m.**

Venue: **Osgoode Hall, Donald Lamont Learning Centre, 130 Queen Street W., Toronto**
or via **Live Webcast**

Register at: <http://www.step.ca/programs.asp?b=Toronto>



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January 19, 2015 - London and Southwestern Ontario Chapter: Value Creation & Business Succession for Small Business and Farms

John Mill is the author of “Hire Your Buyer: A Philosophy of Value Creation”. His book presents a simple and elegant solution to the Small Business succession problem of creating enough value in a business to allow for comfortable retirement. The process? Value creation through thoughtful delegation.

John will also discuss Farm succession planning and explain the practical considerations for advisors to assist their Farm succession clients qualify for cost sharing under the Ontario Growing Forward 2 Program. This presentation will be followed by a moderated panel presentation on The Good, The Bad and the Ugly of Business and Farm Succession featuring Best Practices for Process and Practical Tips and Traps from **John Mill, Mike Bossy** and **Mike Bondy**.

Please join us for this dinner event jointly hosted by the STEP London and Southwestern Ontario Chapter and the London Estate Planners Council.

Program Details



Speaker: **John Mill**, LLM, Author, “Hire your Buyer”

Panelists: **Mike Bossy**, HBA, CPA, CA, CFP, TEP, CAFA, KCC: Bossy Nagy Group
Mike Bondy, CPA, CA, CFP, TEP: Collins Barrow

Registration: **5:15 p.m.**

Cocktails (cash bar): **5:30 p.m.**

Dinner: **6:00 p.m.**

Adjourn: **8:00 p.m.**

Venue: **Highland Country Club**, 1922 Highland Heights, **London, ON**

Register at: <http://www.step.ca/programs.asp?b=Toronto>



Other Upcoming Events

2014/2015 VALUE PASSPORT:

February 11, 2015 – Financial Abuse: Detection and Intervention

Seminar: 3:00 p.m. – 4:45 p.m.

April 15, 2015 – The Transfer of Wealth including the Family Cottage

Seminar: 3:00 p.m. – 4:45 p.m.

May 13, 2015 – Elder Care: A Practical Approach

Seminar: 3:00 p.m. – 5:00 p.m.


In case you missed it...

Estate Trustees: Do you really want the job?




On November 12, 2014, **Archie Rabinowitz**, JD, TEP: Dentons LLP, **Barry Corbin**, LLB: Corbin Estates Law, and **Timothy Youdan**, BA, LL.M., TEP: Davies Ward Phillips & Vineberg LLP, discussed a variety of topics of interest to Estate Trustees. The topics discussed included, compensation, liability protection, creditor claims, Estate Administration Tax, claims by the Canada Revenue Agency, exposure for premature distributions under the Family Law Act or Part V of the Succession Law Reform Act and indemnities and releases.

See some of the interesting comments, questions and discussion with the following links to the archived webcast:

Question for Tim Youden by Barry Corbin 

Question regarding corporate trustees 

Introduction by Archie to discussion on exposure for premature distributions 



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December 9, 2014 STEP Toronto Seasonal Event

A good time was had by all. Special thanks to event supporters Sick Kids Foundation and BMO Financial Group and to "Oui B Jamon" for the live music.



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Member Services Update

The Toronto Branch Member Services Committee is your local connection to STEP member services. We bring issues from the local level to the National Member Services Committee, and work with the other members of the Toronto Branch Executive to deliver services at a local level. If you have questions about STEP member benefits and services, or ideas for how we could enhance the value of your TEP, please contact one of us.

Also, when a new member is proposed for acceptance through the Experienced Practitioner route, we vet the application to ensure the candidate appears to meet the appropriate qualifications. Upon approval, the prospective member is invited to complete the full membership application, which is then reviewed by the Branch Executive. If you know an experienced practitioner who should be a TEP, encourage them to contact Minita Chandy to start the process.

STEP Executive Profiles



Daniel J. Dochylo, TEP, C.S., ACI Arb is a partner at Borden Ladner Gervais LLP's Toronto office and National Chair of the firm's Estate, Trust and Family Litigation Focus Group. He has acted for clients on a wide variety of estate and trust disputes, including rectifications, dependant's relief claims, will challenges, passing of accounts and matters involving charities and foundations. He is also a mediator. For more, please visit www.blg.com.



Harris Jones, CPA, CA, TEP, CFP, CLU, ChFC is the president of HarrisJones Advisory Inc. Harris' qualifications also include the CICA In-depth Tax Course, Life Insurance Agent's Licence and Accident and Sickness Insurance Licence. HarrisJones Advisory Inc. is well placed to guide you through the fog of complexity and recommend the best solution to turn your objectives into financial security for your clients.



Joan Jung is a senior partner and head of Minden Gross LLP's Tax Group. She is a Tax Specialist for Private Enterprise with extensive expertise in related domestic and international tax planning. Joan is a frequent lecturer for business groups and professional organizations on tax matters and estate planning and has written extensively on succession planning for business owners.

For more information, please visit www.mindengross.com

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Rachel Blumenfeld is a partner in Miller Thomson's Private Client Group. She advises clients on tax and estate planning and administration, preparation of Wills, trusts, and Power of Attorney documents, tax matters related to planned giving and business succession planning. She is an active member of the STEP Toronto executive.

<http://www.millerthomson.com/en/our-people/rachel-l-blumenfeld>



Gillian M. Musk, MTI, TEP is the Director, National Office, Trust Services, BMO Harris Private Banking. Gill is responsible for the fiduciary account management of BMO Trust Company's Personal Trust Services. She has over 30 years of experience in all aspects of estate and trust planning and administration. She is a member of the Estate Planning Council of Toronto and the Estate Planners Council of Hamilton.



Corina Weigl is a partner with Fasken Martineau. She focuses her practice on estate and family business succession planning, including wills and trusts, corporate re-organizations, marriage contracts, estate administration, charities and not-for-profit law. Corina also represents clients in both contentious and non-contentious estate litigation matters. Corina is the recipient of the Hoffstein Book Prize, a peer nominated award recognizing professional excellence and contribution to the Bar, as well as a Lexpert Zenith award for her pro bono work for SEDI. For more information, please visit www.fasken.com

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New Intestacy Developments in the United Kingdom: Supreme Court Rectifies a Questionable Will to Avoid an Intestacy and New Intestacy Legislation



By Kimberly A. Whaley, Principal, Whaley Estate Litigation

Some new developments in the area of intestacy in the United Kingdom in 2014 may be of interest to estate practitioners in other common law jurisdictions. In *Marley v. Rawlings*¹ the Supreme Court of the United Kingdom chose to rectify a Will instead of finding intestacy; the result being that the testator's sons received nothing and the entire estate passed to a non-relative pursuant to the testator's intentions. Also, the new *Inheritance and Trustees Powers Act 2014* c.16 came into force on October 1, 2014 which made some significant changes to who will inherit, and the what they will inherit, in an intestacy in the UK.

Marley v Rawlings

Alfred and Maureen Rawlings executed short wills that were identical in terms. Each spouse left his or her estate to the other, but, if the other had already died, the entire estate would be left to Terry Marley. Mr. Marley was not related to the Rawlings but they treated him as their son. By an oversight however, the solicitor had each spouse execute the other spouse's will. Even though the wife died in 2003, no one noticed the error until the husband died in 2006.

The Rawlings' two sons argued that Mr. Rawlings' Will was invalid and that they should inherit under the intestacy legislation. In probate proceedings the Court found the Will was invalid and dismissed Mr. Marley's claim for rectification of the will on the grounds that i) the Will was not a "will" as it did not satisfy certain requirements of the *Wills Act 1837* (including that the will must be signed by the testator) and ii) even if it had, it was not open to the Court to rectify the Will under the *Administration of Justice Act 1982* (Section 20 allows for the rectification of a will only if the testator's intentions were not carried out due to a clerical error or a failure to understand his or her instructions).

The Court of Appeal upheld the decision namely on the first ground that the Will did not satisfy the requirements laid out in the *Wills Act 1837*. Mr. Marley appealed to the Supreme Court. After reviewing the facts and circumstances surrounding the execution of the Will, Lord Neuberger, writing for the majority, concluded that:

. . . the present circumstances seem to give rise to a classic claim for rectification. . . [t]here can be no doubt as to what Mr. and Mrs. Rawlings wanted to achieve when they made their will and that was that [Mr. Marley] should have the entirety of their estate and that [their sons] should have nothing. . . Thus, there is certainty as to what Mr. Rawlings wanted, and there is certainty as to how he would have expressed himself (as there can be no doubt that he would have signed the will prepared for him if he had appreciated the mistake).²

1 2014 UKSC 2.

2 *Marley v. Rawlings* 2014 UKSC 2 at para.54.



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Responding to the argument that the Will could not be rectified as it did not meet the requirements of a “will”, Justice Neuberger stated:

It is true that the Will purports in its opening words to be the will of Mrs. Rawlings, but there is no doubt that it cannot be hers, as she did not sign it; as it was Mr. Rawlings who signed it, it can only have been his will, and it is he who is claimed in these proceedings to be the testator for the purposes of [the *Wills Act 1837*]. . .It does not appear to me that a document has to satisfy the formal requirements of [the *Wills Act 1837*], or of having the testator’s knowledge and approval, before it can be treated as a ‘will’ which is capable of being rectified pursuant to the [*Administration of Justice Act 1982*].³

In answer to the argument that this was not a ‘clerical error’ capable of rectification, Justice Neuberger stated:

If, as a result of a slip of the pen or mistyping, a solicitor (or a clerk or indeed the testator himself) inserts the wrong word, figure or name into a clause of a will, and it is clear what word, figure or name the testator had intended, that would undoubtedly be a clerical error which could be rectified under section 20(1)(a) [of the *Administration of Justice Act 1982*]. It is hard to see why there should be a different outcome where the mistake is, say, the insertion of a wrong clause because the solicitor cut and pasted a different provision from that which he intended. Equally, if the solicitor had cut and pasted a series of clauses from a different standard form from that which he had intended, I do not see why that should not give rise to a right to rectify under section 20(1)(a), provided of course the testator’s intention was clear.⁴

The Supreme Court allowed the appeal and held that the Will should be rectified so that it reflected Mr. Rawlings name instead of Mrs. Rawlings. Mr. Marley inherited the entire estate and the deceased’s two sons inherited nothing.

The *Inheritance and Trustees Powers Act, 2014*

Of related interest is the new *Inheritance and Trustees’ Powers Act 2014* c.16 which came into force on October 1, 2014. Significant changes include where a deceased leaves no issue, the residuary estate is to pass to a spouse or civil partner absolutely. Also, where there are issue, the surviving spouse or civil partner acquires the personal chattels (all tangible movable property except money, as per a new definition); a statutory legacy of £250,000; and half of the residue of the estate absolutely. Previously the legislation only provided for a life interest in the half of the residue. The remaining half of the residue goes to the surviving issue on statutory trusts. The statutory legacy of £250,000.00 will be index linked and regularly reviewed, unlike Ontario’s preferential share of \$200,000.00 under the *Succession Law Reform Act, R.S.O. 1990, c.S.26 (SLRA)*.

Also, the new legislation provides some protection for adopted children and unmarried fathers, and trustees are provided with new powers, including the ability to pay out as much income as they see fit (previously they had to provide due consideration of certain circumstances including the beneficiary’s age etc.) and the new act changes the amount and type of advancements that trustees can make.

3 *Marley v. Rawlings* 2014 UKSC 2 at para. 60.

4 *Marley v. Rawlings*, 2014 UKSC 2 at para. 72.



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The new legislation did not, however, make any changes allowing for a common-law spouse to inherit under an intestacy, which remains in line with Ontario's *SLRA*. However, common-law spouses in the UK may be able to make a claim against the deceased's estate for a reasonable financial provision, also similar to dependant support claims in Ontario. Overall the new act revised aged legislation to reflect modern family dynamics and surviving spouses and civil partners will benefit from these changes.

Business Succession Planning: What Every Business Owner Needs To Know



Jeffrey Halpern, CPA, CA, TEP, Business Succession Advisor with TD Wealth.

This is part two of a three part article.

In Part 1, we examined the reasons why Business Succession Planning has become such an important topic in Canada. In Part 2, we will look at what needs to be considered as part of a well thought out succession plan.

What is business succession planning?

When it comes to business succession, there are two main aspects that need to be attended to----the transition of "ownership" and "management". Business succession planning is the process of devising the framework for the future transfer of *ownership and management* to a chosen successor, be it family member, business partner/shareholder, management or outside third party.

Often, they go hand in hand (ie succession to a child who takes over). In some cases, a family can retain ownership, and bring in professional management. In other cases, the family sells the business altogether. It is also a plan that seeks to maximize shareholder value, family harmony, and overall security to all interested parties (including shareholders, family, management, employees, customers and bankers).

What does a Business Succession Plan Encompass?

A well thought out business succession plan takes a comprehensive approach to evaluating all the relevant elements for the transition. Ordinarily, a succession planning review covers:

1. a thorough fact finding review of the business history and family fact pattern
2. an evaluation of the practical options available at exit
3. defining a management transition plan
4. examining the perspectives of the different stakeholders
5. arranging a business valuation, and examining value enhancement techniques
6. retirement planning enhancements (ie IPP, RCA, etc)
7. tax planning considerations (eg multiplying the \$800,000 capital gains exemption)
8. transition financing considerations
9. estate planning techniques (eg Wills, Powers of Attorney, Estate Freeze, Family Trust)
10. insurance and contingency planning

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Benefits of Implementing a Succession Plan

Business owners who have not implemented a succession plan often cite many excuses, including not having the time to plan, feeling it is too early to plan, finding it too complex a process, saying they can't find adequate advice or tools, or because they are afraid of causing a family conflict.

The benefits of implementing a well thought out business succession plan far outweigh the excuses, and include:

- ensuring the smooth transition and continuity of the business
- maximizing the value of the business
- minimizing income taxes and capital gains taxes
- minimizing probate fees and the drawbacks of intestacy
- minimizing estate taxes and inheritance issues
- providing financial security for the family
- preserving and maximizing family harmony
- clarifying future roles and responsibilities within the business
- inspiring confidence in key stakeholders, including family, management, employees, customers, suppliers and bankers.

Next month, in part 3 of this series, we will look at transition timing issues.

About Connection

Please note that each advertiser is linked to their web page (as are our program sponsors on the last page). Please click through to their web pages to learn more about each of our sponsors and advertisers.

STEP Toronto publishes 'Connection' for our membership 6-7 times per year between August and May. We welcome your feedback. Please send any comments or inquiries to Ted Polci, tedp@fyork.com. Interested advertisers are also encouraged to contact Ted Polci to inquire about advertising rates and terms.

Letters, announcements, opinions, comments from members

If you have an article or an idea that would be of interest to other members of STEP, please send them to paul.keul@scpllp.com for inclusion in our next edition of the STEP Toronto Connection.

STEP continues to grow and a number of new members have recently been added to the Toronto branch. We extend a hearty welcome to all of the new members, and look forward to seeing you at upcoming programs and events. The process for the Experienced Practitioner route to membership has recently been changed, to ensure we maintain the high quality of our membership. If you know anyone who would be a good candidate for STEP membership, and who has the requisite experience to qualify under the Experienced Practitioner route, please direct them to the STEP Canada website.

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