STEP CALGARY

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ATTACKING AND DEFENDING GIFTS

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INTRODUCTION

Some individuals choose to transfer most or all of their assets to their loved ones during their lifetime, rather than under a will after their death. This estate planning option can have many positive results, as they are able to see their family members enjoy their gift. However, this option is not without its potentially negative consequences. When someone gifts or transfers the majority of their wealth during their lifetime, there is little to be distributed under their Will, which may be unexpected for beneficiaries (or those expecting to be beneficiaries). While these *inter vivos* transfers or gifts are often completed as part of a carefully executed estate plan, sometimes they are completed for the wrong reasons or for unlawful reasons. If grounds exist, these *inter vivos* gifts or wealth transfers can be set aside. This would result in those assets becoming part of the estate and dispersed to the estate beneficiaries. This paper will review the conditions required to create a valid gift, grounds for attacking or setting aside *inter vivos* gifts or wealth transfers, and recent relevant case law.

A VALID GIFT

Often when there is a transfer of an asset for estate planning purposes the transfer is gratuitous, as in the grantor does not accept any payment (or token payment) from the grantee. If the transfer is gratuitous, it must be asked whether it is a valid gift, and if not, should the gratuitous transfer be set aside as void?
Three elements must be present in order to have a valid gift (or to “perfect” a gift):

1) An intention to donate (sometimes referred to as donative intent, or *animus donandi*);

2) Acceptance of the gift by the donee; and
3) A sufficient act of delivery or transfer.[1]

In the recent case of ***Kavanagh v. Lajoie*, 2014 ONCA 187** the Ontario Court of Appeal opined:

> For a gift to be valid and enforceable it must be perfected. In other words, the donor must have done everything necessary and in his power to effect the transfer of property. An incomplete gift is nothing more than an intention to gift. The donor is free to change his mind. See *Bergen v. Bergen* [2013] BCJ No. 2552.[2]

In ***Lubberts Estate (Re)*, 2014 ABCA 216** Justice Wakeling observed:

> A person may make a gift of real or personal property in which she has a legal or equitable interest by *inter vivos* gift or testamentary disposition. J. MacKenzie, Feeney's Canadian Law of Wills § 1.1 (4th ed. looseleaf issue 49 April 2014) & A. Oosterhoff, Oosterhoff on Wills and Succession 113 (7th ed. 2011). **An inter vivos gift exists if the donor, while alive, intends to transfer unconditionally legal title to property and either transfers possession of the property to the donee or some other document evidencing an intention to make a gift and the donee accepts the gift.** See Standard Trust Co. v Hill, [1922] 2 W.W.R. 1003, 1004 (Alta. Sup. Ct. App. Div.) ("A gift of a chattel per verba de presenti united with possession in the donee makes a perfect gift, whether the possession proceeds, accompanies or follows the words"); Cochrane v

[1] See *McNamee v. McNamee*, 2011 ONCA 533 at para.24; John Poyser, *Capacity and Undue Influence*, (Toronto: Carswell, 2014) at p.438 ("Poyser"); and Bruce Ziff, Principles of Property Law, 3rd ed (Toronto, Carswell:2000), at pp. 140-141.
[2] *Kavanagh v. LaJoie,* 2014 ONCA 187 at para. 13.

> Moore, 25 Q.B.D. 57 (C.A. 1890) (there is no gift of a chattel capable of manual transfer without delivery from the donor to the donee); J. MacKenzie, Feeney's Canadian Law of Wills §1.4 ("there must be evidence of a donative intent of the donor to be unconditionally bound by the transfer coupled with the delivery of either the subject matter of the gift or some appropriate indicator of title") & W. Raushenbush, Brown on Personal Property 77-78 (3d. ed. 1975) (the donor must intend to give the property; the donor must transfer the property to the donee; and the donee must accept the property).[3] [emphasis added]

The British Columbia Court of Appeal reviewed the important distinction between an *inter vivos* gift and a testamentary disposition in ***Norman Estate v. Watch Tower Bible and Tract Society of Canada*, 2014 BCCA 277**. Citing *Wonnacott v. Loewen* (1990), 44 B.C.L.R. (2d) 23 at 26-27 (C.A.) the Court found that cases where documents are held to be testamentary often include the following factual elements: 1) no consideration passes; 2) the document has no immediate effect 3) the document is revocable; and 4) the position of the donor and donee does not immediately change. The Court also observed that:

> [e]ven where an intended disposition is revocable by the maker or where enjoyment of it is postponed until the death of the maker**, if, at the time of its execution, the document is legally effective to pass some immediate interest in the property, no matter how slight, the transaction will not be classified as testamentary**: James MacKenzie, Feeney's Canadian Law of Wills, 4th ed. (Markham, ON: LexisNexis Canada Inc., 2000), at para. 1.20.[4] [emphasis added]

[3] *Lubberts Estate (Re)* 2014 ABCA 216 at para. 32.
[4] 2014 BCCA 277 at para. 21.

Inter vivos gifts can include outright gifts of money and real or personal property; the transfer of property into joint ownership (both real property and bank accounts); or the transfer of legal title to the property to a trust.

COMMON LAW GROUNDS OF ATTACK

NO INTENT TO PERFORM TRANSFER

Of the three elements to perfect a gift (intention, acceptance, transfer), intention is often disputed. Without intention to perform it, there can be no valid juridical act.[5] A gift or *inter vivos* transfer is void for want of intention, not voidable. The onus is on the person who received the gift to prove on a balance of probabilities that a gift was intended by the transferor at the time of the transfer.[6] This is so, as equity presumes bargains, not gifts.[7]

In ***Bakken Estate v. Bakken* 2014 BCSC 1540** the court examined the evidence a judge can consider when deciding a transferor's or giftor's intentions:

- A party opposing a claim of a gift may adduce evidence of intent that arose sometime after the transfer occurred. The modern rule is that evidence of intention that is not contemporaneous to the time of transfer, or nearly so, should not be excluded.[8]
- For evidence to be included however the judge must find it relevant to the intention of the transferor **at the time of the transfer**, and the trial judge must assess its reliability, guarding against self-serving evidence that tends to reflect a change in intention.[9]

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[5] Poyser*, supra* note 1 at p.415.
[6] *Pecore v. Pecore*, 2007 SCC 17 at paras. 24 & 43 ("*Pecore*"). However, this general rule is subject to exceptions where a party seeks to set aside an instrument on the ground of *non est factu*m or where the presumption of advancement is operative (see *Poyser* at p.416).
[7] *Pecore v. Pecore*, 2007 SCC 17 at para. 24.
[8] *Bakken Estate v. Bakken* 2014 BCSC 1540 at para. 74.
[9] *Bakken Estate v. Bakken* 2014 BCSC 1540 at para. 74, citing *Pecore v. Pecore* 2007 SCC at para. 59.

NON EST FACTUM

Non est factum is the plea that a deed or other formal document is declared void for want of intention. However, *non est factum* places the legal onus on the person attacking the transfer or gift to prove "no intention". This is distinct from the ground of attack discussed above where the onus is on the person alleging that a valid gift was made or a valid wealth transfer occurred.[10] *Non est factum* is a defence, developed in the court of common law not equity:

> [W]here a document was executed as a result of a misrepresentation as to its nature and character and not merely its contents the defendant was entitled to raise the plea of *non est factum* on the basis that his mind at the time of the execution of the document did not follow his hand."[11]

> *Non est factum* is a defence whose application is restricted to those circumstances where the person relying on it must show: 1) they were not careless, and 2) the document signed was different from the one they thought they were signing.[12]

Non est factum was proven in the case of ***Servello v. Servello***, **2014 ONSC 5035, aff'd 2015 ONCA 434**, where the mother thought she was signing power of attorney documents, when really she was signing a transfer of the title to her property into her son's name. The court found that *non est factum* applied and the transfer of an interest in the property to her son was void:

> Whatever it was that [the mother] thought she was signing at the time, I am confident that she did not believe that she was signing a document that transferred her entire property, including the home property, to Antonio. She had made it clear throughout her life that she intended to treat her

[10] Poyser at p.455.
[11] *Marvco Color Research Ltd. v. Harris*, [1982] 2 S.C.R. 774, 141 D.L.R. (3d) 577.
[12] *Beer v. Beer (*1997), 43 O.T.C. 115, 13 R.P.R. (3d) 33 (Ont. Ct. (Gen. Div.)) at para. 26.

> children equally upon death, and there was no reason for her to transfer the entire home property to one of her eight children.[13]

Another recent case where *non est factum* was plead was in the decision in ***Belchevski v. Dziemianko***:

> *Non est factum* is a difficult plea to make out; it requires that the party signing a document must have a fundamental [mis]understanding as to the nature or effect of the document and must not be guilty of carelessness in signing the document without being aware of its contents: see *Marvco Color Research Ld. v. Harris*, [1982] 2 S.C.R. 774; *Bhuvanendra v. Sivapathasundram* 2014 ONSC 278 at para. 49; and *Roth Estate v. Juscheka*, 2013 ONSC 4437 at para. 143.[14]

However, the Court found that *non est factum* had no application to the facts of this case. The parents understood the true nature and character of the transaction (they transferred title in their home into to joint tenancy with their daughter) at the time of transacting.[15] Also there was sufficient evidence to show that the parents intended to gift the home to their daughter as a "complete and unconditional gift". The lawyer who executed the transfer spoke Macedonian (the parents' language), was a senior member of the Ontario bar, had completed thousands of real estate transactions, he always made sure his clients understood what he was doing and the documents they were executing, he took contemporaneous notes that confirmed a gift during their lifetime and clearly explained what joint tenancy meant.[16]

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[13] 2014 ONSC 5035, aff'd 2015 ONCA 434 at para. 44.
[14] 2014 ONSC 6353 at para. 18.
[15] 2014 ONSC 6353 at para. 20.
[16] 2014 ONSC 6353 at para. 21.

LACK OF CAPACITY

If the gift-maker lacked the requisite capacity to make the gratuitous transfer then the gift is open to attack. If the transferor lacked capacity to gift then he/she could not properly form the intention to gift and the gift is not perfected. A gift or other *inter vivos* wealth transfer is void, not voidable, for want of capacity.[17] The legal onus is on the person alleging it was a gift to prove that the person who gave them the gift had the capacity to do so. While the general presumption of capacity exists, it can be easily rebutted by evidence or circumstances that put capacity in doubt.[18]

In England and Canada the widely accepted seminal case on determining capacity to gift is *Ball v. Mannin*[19] which found that a person had capacity if the person was "capable of understanding what he did by executing the deed in question, when its general purport was fully explained to him." [20]

This standard to determine requisite capacity to gift has been refined over the years through various cases and is now divided into two requirements. In order to be capable of making a gift, a donor requires the following:

a) The ability to understand the nature of the gift; and
b) The ability to understand the specific effect of the gift in the circumstances.[21]

Also, note that these requirements are also applied when the title in a house is transferred to joint tenancy, with the transferor retaining dominant possession with intent to pass to the giftee upon death.[22]

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[17] Poyser at p.356.
[18] Poyser at p.356.
[19] *Ball v. Mannin* (1829), 1 Dow & Cl. 380, 6 E.R. 568 (H.L.).
[20] *Ball v. Mannin* (1829), 1 Dow & Cl. 380, 6 E.R. 568 (H.L.);
[21] *Royal Trust Company v. Diamant*, [1953] (3d) D.L.R. 102 (B.C.S.C.) at 6; and *Bunio v. Bunio Estate* [2005] A.J. No. 218 at paras. 4 and 6

When determining the requisite capacity to gift, one must also take into consideration the size of the gift in question. For gifts that are of significant value, relative to the estate of the donor, the standard or criteria for *testamentary* capacity arguably may apply.[23] This means that the giftor has to meet the same standard or criteria as a testator (as evolved from *Banks v. Goodfellow*[24]) and must be able to:

1) Understand the nature of the act and its effects;
2) Shall understand the extent of the property of which he or she is disposing;
3) Shall be able to comprehend and appreciate the claims to which he or she sought to give effect; and,
4) With a view to the latter object, that no disorder of the mind shall poison the testator's affections, pervert the testator's sense of right, or present the exercise of the testator's natural faculties – that no insane delusion shall influence the testator's will in disposing of his or her property and bring about a disposal of it which, if the mind had been sound, would not have been made.[25]

This means that a higher threshold could apply if a person is gifting the majority of his or her assets and a lower threshold if there is a smaller size of gift.[26] For example, in *Re Beaney,*[27] an elderly woman made a gift of her house, her largest asset, later in life, and effectively pre-empted the operation of her will. The court

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[22] Poyser at p. 357.
[23] *Re Beaney* (1978), [1978] 2 All E.R. 595 (Eng. Ch. Div.), *Mathieu v. Saint-Michel*[1956] S.C.R. 477 at 487. See also the case of *Verwood v. Goss* 2014 BCSC 2122 where the court held that the "requisite capacity to make *inter vivos* gifts is the same as testamentary capacity" relying on *Rogers Re* [1963] B.C.J. No. 133 (BCCA) at para. 204.
[24] (1870), L.R. Q.B. 549, 39 L.J.Q.B. 237.
[25] Poyser at p.44.
[26] Poyser at p.356. See also *Foley v. McIntyre*, 2014 ONSC 194 at para. 143.
[27] *Beaney (Deceased) Re* [1978] 2 All E.R. 595.

determined that the criteria to be applied to determine capacity were expressed as being equivalent to that under *Banks v. Goodfellow*[28] or in other words, testamentary capacity.

In the recent case of ***Foley v. McIntyre*, 2014 ONSC 194, aff'd 2015 ONCA 382** the court was asked to determine (among other things) whether a father had capacity to gift monies from certain investments to his daughter prior to his death. After the father's death, his son contested the *inter vivos* transfers. At the time of the transfers, the father was living in a nursing home, had suffered from multiple ischemic attacks, suffered transient delirium, needed assistance with daily living and was prone to falls.[29] However, no medical diagnosis was ever made of dementia nor were there any mental or cognitive diagnoses or evidence in his medical records of any concern of a dementing illness. Also, the father (not a substitute decision maker) consented on his own behalf to the advance directive of a do-not-resuscitate order.[30]

The court was assisted by two expert witnesses who conducted retrospective capacity assessments, however, Justice Mullins preferred the daughter's expert: "In particular, I prefer and accept the opinion evidence of [the daughter's expert]. I accept his evidence that capacity is task specific. I consider that his approach in assessing the father's capacity was more nuanced and appropriately premised on a review of all of the available evidence, rather than the approach of the plaintiff's expert, which was premised much more so on inferences drawn from what he described as the burden of the father's physical illness".[31] The court found that the father was capable to gift as he "knew his donee daughter, was

[28] (1870), L.R. Q.B. 549, 39 L.J.Q.B. 237.
[29] *Foley v. McIntyre*, 2014 ONSC 194 at paras. 92-93.
[30] *Foley v. McIntyre*, 2014 ONSC 194 at para. 130.
[31] *Foley v. McIntyre,* 2014 ONSC 194 at para. 171.

well aware of his investment portfolio, and himself initiated and executed an intention to gift, thus demonstrating his capacity to do so".[32]

The Court of Appeal recently dismissed an appeal in this matter,[33] noting that the trial judge's finding that the father did not lack capacity was a finding of fact which was entitled to deference, absent an error of law or principle or unreasonableness. The Court of Appeal also noted that the trial judge was entitled to reject the testimony of the son concerning his father's capacity and entitled to prefer the opinion of the daughter's expert over that of the son's expert. There was no basis to interfere with the conclusion that the father was capable to make the gifts and understood the consequences of doing so.[34]

In ***Archer v. St. John*** **2008 ABQB 9**, a father's capacity to transfer a portion of his land to his daughter was examined (among other things, including undue influence discussed below). The deceased suffered from advanced stages of supra-nuclear palsy when he executed the transfer. The Court listened to testimony from family members, the deceased's family physician and an expert. The expert testified that there is associated dementia in a majority of cases of supra-nuclear palsy. However, the expert never met with the deceased and never conducted any tests on him. The deceased's family physician raised no issues of concern and had executed a document attesting to his capacity shortly before the land transfer. Furthermore, family members and his caregivers testified that while there was some memory loss he was able to understand conversations and was aware of what was transpiring around him. The Court concluded that there was not enough evidence to conclude that the deceased lacked the requisite capacity.[35]

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[32] *Foley v. McIntyre,* 2014 ONSC 194 at para. 178.
[33] *Foley v. McIntyre* 2015 ONCA 382.
[34] *Ibid* at para. 32.
[35] 2008 ABQB 9 at para. 32.

COMMON LAW COERCION/DURESS

If a donor has been coerced into giving a gift, or has made a gift under duress, the common law defence of duress or coercion may be available to render that gift void.[36] Outright coercion occurs rarely and is hard to prove.[37] While common law coercion is distinct from equitable undue influence (discussed below) common law coercion/duress can be alleged concurrently with undue influence.[38] At common law, the defence of duress was only available were there was actual or threatened violence or imprisonment.[39] Equity extended it to include economic duress.[40] In ***Lei v. Crawford* 2011 ONSC 349**, in the context of contract law, the Ontario Superior Court of Justice noted that:

> Duress involves coercion of the consent or free will of the party entering into a contract. To establish duress, it is not enough to show that a contracting party took advantage of a superior bargaining position; for duress, there must be coercion of the will of the contracting party and the pressure must be exercised in an unfair, excessive or coercive manner. See: *Brooks v. Alker* (1975), 1975 CanLII 423 (ON SC), 9 O.R. (2d) 409 (H.C.J.); *Underwood v. Cox* (1912), 26 O.L.R. 303 (C.A.); *Burris v. Rhind* (1899), 1899 CanLII 87 (SCC), 29 S.C.R. 498; *Piper v. Harris Mfg. Co*. (1888), 15 O.A.R. 642.[41]

COMMON LAW FRAUD

Justice Perrell in the recent case of *Holley v. Northern Trust Co*.,[42] reviewed the elements for common law fraud:

> The constituent elements of a common law fraud, deceit, or fraudulent misrepresentation claim, as they are variously called, are: (1) a false statement by the defendant; (2) the defendant knowing that the statement

[36] Poyser at p. 490.
[37] Poyser at p.312.
[38] Poyser at p.490, citing *Royal Bank of Scotland plc. v. Etridge* (No.2)(2001), [2001] UKHL 44, [2002] 2 A.C. 773 (Eng.H.L.) at para.8.
[39] Marr v. Clark 1977 CanLII 357 (BCSC) at para. 15.
[40] *Ibid*.
[41] *Lei v. Crawford* 2011 ONSC 349 at para.7.
[42] 2014 ONSC 889, aff'd by 2014 ONCA 719.

is false or being indifferent to its truth or falsity; (3) the defendant having an intent to deceive the plaintiff; (4) the false statement being material and the plaintiff having been induced to act; and, (5) the plaintiff suffering damages: *Parna v. G. & S. Properties Ltd.* (1970), 1970 CanLII 25 (SCC), 15 D.L.R. (3d) 336 (S.C.C.) at p. 344; *Bruno Appliance and Furniture Inc. v. Hryniak*, 2014 SCC 8 (CanLII); *Hryniak v. Mauldin*, 2014 SCC 7 (CanLII) at para. 87; *TWT Enterprises Ltd. v. Westgreen Developments (North) Ltd.* (1990), 1990 CanLII 5599 (AB QB), 78 Alta. L.R. (2d) 62 (Q.B.), aff'd (1992), 1992 ABCA 211 (CanLII), 3 Alta. L.R. (3d) 124 (C.A.); *Derry v. Peek* (1889), 14 App. Cas. 925 (H.L.).

Arguably, based on the elements above, if someone was induced into making an *inter vivos* gift based on a knowingly false statement, and the donor suffered damages, the gift could be set aside on the ground of common law fraud.

EQUITABLE GROUNDS OF ATTACK

UNDUE INFLUENCE

Undue influence is also a common ground to attack an *inter vivos* gift or wealth transfer. The doctrine of undue influence is an equitable principle used by courts to set aside certain transactions where an individual exerts such influence on the grantor or donor that it cannot be said that his/her decisions are wholly independent. Gifts found to have been made under undue influence are voidable, not void.[43] The onus to prove undue influence is on the party that alleges it and the standard is the normal civil standard: balance of probabilities. The equitable defences of *laches* and acquiescence are available when a gift is attacked on the grounds of *inter vivos* undue influence.[44]

[43] *Longmuir v. Holland*, 2000 BCCA 538.
[44] Poyser at p.529.

Testamentary undue influence is different than *inter vivos* undue influence.[45] Specifically that, "conduct necessary to set aside a gift or other *inter vivos* wealth transfer on the grounds of actual undue influence is broader and more amorphous than the narrow band of conduct that is necessary to set aside a will or other testamentary wealth transfer."[46] For testamentary undue influence to exist the conduct must amount to coercion and there is no presumption of undue influence.[47] However, courts have imported the principles of testamentary undue influence where the person making the gift or wealth transfer is on his or her deathbed.[48]

Undue influence in the *inter vivos* gift context is usually divided into two classes: 1) direct or actual undue influence, and 2) presumed undue influence or undue influence by relationship.[49]

ACTUAL UNDUE INFLUENCE

This is where intent to gift is secured by unacceptable means. No relationship is necessary between the person making the gift and the person receiving it to attack a gift on the grounds of actual undue influence.

Actual undue influence in the context of *inter vivos* gifts or transfers has been described as "cases in which there has been some unfair and improper conduct, some coercion from outside, some overreaching, some form of cheating. . ."[50] Actual undue influence would be where someone forces a person to make a gift,

[45] Poyser at p.529.
[46] Poyser at p.489.
[47] Poyser at pp.306, 325, and 529.
[48] Poyser at p. 529; *Keljanovic Estate v. Sanservino* 2000 CarswellOnt 1312 (C.A.).
[49] *Allcard v. Skinner* (1887), 36 Ch. D. 145 at 171. Poyser at p.473. Note also that there is a distinction between presumption of undue influence and doctrine of undue influence. Presumption is an evidentiary tool. Doctrine is a substantive challenge originating in courts of equity, see Poyser at p.478.
[50] *Allard v. Skinner* (1887), L.R. 36 Ch. D. 145 (Eng.C.A., Ch.Div.) at p. 181.

or cheats or manipulates or fools them to make such a gift.[51] The conduct amounting to actual undue influence however, often happens when the influencer and the victim are alone, which means it may be difficult to produce direct evidence. However, actual undue influence can be proven by circumstantial evidence.[52]

UNDUE INFLUENCE BY RELATIONSHIP

This second class does not depend on proof of reprehensible conduct. Under this class, equity will intervene as a matter of public policy to prevent the influence existing from certain relationships from being abused.[53]

Relationships that qualify as a 'special relationship' are often determined by a 'smell test'.[54] Does the "potential for domination inhere in the relationship itself"?[55] Relationships where presumed undue influence has been found include solicitor and client, parent and child, and guardian and ward, "as well as other relationships of dependency which defy easy categorization."[56] A gratuitous transfer from a parent to a child does not automatically result in a presumption of undue influence, but it will be found where the parent was vulnerable through age, illness, cognitive decline or heavy reliance on the adult child.[57]

Once a relationship is established, the onus moves to the person alleging a valid gift to rebut it. The giftor must be shown to have entered into the transaction as a

[51] *Allard v. Skinner* (1887), L.R. 36 Ch. D. 145 (Eng.C.A., Ch.Div.); *Bradley v. Crittenden*, 1932 CarswellAlta 75 at para.6.
[52] Poyser at p.492.
[53] *Ogilvie v. Ogilvie Estate* (1998), 49 B.C.L.R. (3d) 277 at para. 14.
[54] Poyser at p.499.
[55] *Geffen v. Goodman Estate*, [1991] 2 S.C.R. 353 at para. 42 ("Geffen").
[56] *Geffen v. Goodman Estate*,[1991] 2 S.C.R. 353 at para. 42.
[57] *Stewart v. McLean* 2010 BCSC 64, *Modonese v. Delac Estate* 2011 BCSC 82 at para. 102

result of his or her own "full, free and informed thought".[58] It is often difficult to defend a gift made in the context of a special relationship. The gift must be from a spontaneous act of a donor able to exercise free and independent will. In order to be successful in attacking a gift based on presumed undue influence the transaction or gift must be a substantial one, not a gift of a trifle or small amount.[59]

The presumption of undue influence can be rebutted by showing[60]:

a) no actual influence was used in the particular transaction or the lack of opportunity to influence the donor;[61]
b) the donor had independent legal advice or the opportunity to obtain independent legal advice;[62]
c) the donor had the ability to resist any such influence;[63]
d) the donor knew and appreciated what she was doing;[64] or
e) undue delay in prosecuting the claim, acquiescence or confirmation by the deceased.[65]

In ***Zeligs v. Janes* 2015 BCSC 7** the Court found that there was a presumption of undue influence between an adult daughter and her mother in the context of the transfer of the mother's valuable property and house into joint tenancy with her daughter. The mother was ninety-four, the daughter was living with the mother at the time, the transfer was gratuitous, and the daughter was the mother's attorney under a Power of Attorney.[66] The daughter however, rebutted

[58] *Geffen v. Goodman Estate* at para. 45.
[59] Poyser at p.509.
[60] From *Zeligs v. Janes* 2015 BCSC 7, citing Justice Punnet in *Stewart v. McLean*, 2010 BCSC 64 at para. 97.
[61] *Geffe*n at p.379; *Longmuir v. Holland*, 2000 BCCA 538 at para. 121
[62] *Geffen* at p. 370; *Longmuir* at para. 121.
[63] *Calbick v. Warne*, 2009 BCSC 1222 at para. 64.
[64] *Vout v. Hay*, [1995] 2 S.C.R. 876 at para. 29.
[65] Longmuir at para. 76.
[66] *Zeligs v. Janes*, 2015 BCSC 7 at para. 114.

this presumption by showing that there was no evidence of actual influence, the mother obtained independent legal advice, and that despite her physical frailties the mother was "lucid", "capable of doing things like getting her driver's licence while in her 90s", "she was assertive about her interests" and had the ability to resist undue influence.[67]

Also, presumed undue influence was found (but not rebutted) in the recent case of ***Servello v. Servello* 2014 ONSC 5035** in the context of an *inter vivos* transfer of a mother's property to her son. In this case, shortly after the death of his father, a son attended a registry office with his mother, and with the assistance of a conveyancer, the title to the mother's house was transferred to himself as sole owner. The mother's first language was Italian and her comprehension and reading in English was limited. Her understanding at the time was that she was attending a court house so that her son could sign a document which would give him "the power to look after her" as she grew older. Thirteen days later the son returned to the office and he transferred the property to himself and his mother as joint tenants.[68]

Three years later, the mother attended the registry office with one of her daughters and had a title search completed on her house. This was the first time

[67] *Zeligs v. Janes*, 2015 BCSC 7 at para. 157. This is an interesting case as, while the court found that the daughter rebutted the presumptions of resulting trust and undue influence, the Court found that the daughter severed the joint tenancy while the mother was still alive when she used the sale proceeds of the property to pay off mortgages on the property (used for her benefit) and transferred the balance into an investment for the sole benefit of her and her husband. This transfer destroyed the unity of possession. The Court found that "the right of survivorship in favour of [the daughter] that would have followed on the death of Dorothy ended with the severance of the joint tenancy" and the sale proceeds were ordered to be distributed under the mother's will. At paras. 191-192. See also the related decision of *Zeligs v. Janes* 2015 BCSC 525, where the Court concluded that the daughter breached her fiduciary duties as her mother's power of attorney for property when she took out certain mortgages on the property (that she held jointly with her mother) for her and her husband's benefit. The court ordered that the amounts of the mortgages discharged as part of the conveyance of the property were subject to a constructive trust in favour of the estate of the mother. Alternatively the court noted that the doctrine of equity exoneration applied, and required the daughter and husband to exonerate the estate of Dorothy for the amounts of the two mortgages.

[68] 2014 ONSC 5035 at paras. 1-4.

that she became aware that he son had acquired a right of survivorship in her home. The son refused to restore title to the property to his mother. She sought an order from the court restoring her as the property's sole owner.

At the time of the transfer, the son was living in his mother's house, the mother was recently widowed, English was not her first language and the family had always used the same lawyer for all of their legal dealings. The son chose however to take his mother directly to the registrar's office, did not use the family lawyer, and used a conveyancer who was a stranger to the mother and who did not speak Italian. The son who received the benefit of the transaction was by her side throughout.[69] The court held that the transfer of the property into joint tenancy should be set aside and that the mother should be restored as sole owner, finding that:

> The law is clear that in the case of gifts or other transactions *inter vivos*, the natural influence as between a mother and son exerted by those who possess it to obtain a benefit for themselves, is undue influence.
>
> This is a textbook example of a case in which the presence of undue influence by a child over a parent requires that the parent have independent legal advice. Rosina did not receive independent legal advice, and accordingly the two deeds which gave Antonio an interest in the land should be set aside on this basis as well.[70]

The son's appeal was dismissed, with the Court of Appeal noting that the trial judge's finding of undue influence was "supported by the evidence".[71] The son "lived in the [mother's] home; the [mother] was recently widowed; her first

[69] *Servello v. Servello* 2014 ONSC 5035 at para. 47.
[70] *Servello v. Servello* at paras.48-49.
[71] *Servello v. Servello* 2015 ONCA 434 at para. 3.

language was Italian and she had limited comprehension and reading ability in English; and she did not receive independent legal advice."[72]

In ***Kavanagh v. Lajoie*** **2013 ONSC 7, upheld 2014 ONCA 187** the court concluded that there was no presumed undue influence in the context of an *inter vivos* transfer of property from a father to a daughter. In its assessment, the court asked the following questions:

1) Did the daughter's relationship with the father contain tools or capacity capable of exerting undue influence on him?
2) Whether there existed a potential for domination or persuasive influence by the daughter over her father?
3) Did the daughter within that relationship have a persuasive or dominating influence over the will of her father?
4) If the answer to the above questions is affirmative, had the daughter rebutted the resulting presumption?[73]

The court, answered the questions in the negative, based on the evidence presented. The court concluded that the daughter "did not have a persuasive or dominating influence over the will of [her father] as to her receipt of an interest in [the property]. She had influence with her father and attempted on occasion to influence him. She did not however dominate or control his will. As such the presumption of undue influence has not been established".[74] The court also determined that "[s]hould the above conclusion be incorrect and the presumption of undue influence exists on the evidence, this Court is of the opinion that such presumption has been rebutted by the same facts and analysis set forth above. . .[75] This decision was upheld on appeal.

[72] *Servello v. Servello* 2015 ONCA 434 at para. 3.
[73] *Kavanagh v. Lajoie* 2013 ONSC 7 at para. 133, upheld 2014 ONCA 187.
[74] *Kavanagh v. Lajoie* 2013 ONSC 7 at para. 149, upheld 2014 ONCA 187.
[75] *Kavanagh v. Lajoie* 2013 ONSC 7 at para. 150, upheld 2014 ONCA 187.

While the Court in ***Archer v. St. John* 2008 ABQB 9**, found that a daughter failed to rebut the presumption of resulting trust when her father transferred a portion of his property into joint tenancy with her, had the Court found that a valid gift had been made, it would have set aside the gift as having been procured as a result of undue influence. The Court relied on the following evidence to support a finding of undue influence sufficient to negate the gift:

- There was a special relationship between father and daughter;
- The father had a history of signing documents placed in front of him (as his deceased wife had looked after all of the financial paper work);
- No one discussed with the father that he had already given the property to his son in his will;
- The sister failed to discuss the transfer with her siblings (especially the brother who was supposed to have inherited it under the will or her sisters who were their father's attorney under a power of attorney for property);
- There was no independent legal advice;
- The daughter used her personal friends as commissioner of oaths and witnesses to the transfer;
- The transfer was executed in the daughter's home and she controlled who was present ; and
- The father was vulnerable and dependant on others.[76]

And finally, the recent case of ***Elder Estate v. Bradshaw* 2015 BCSC 1266** shows that a relationship between an older adult and a younger caregiver does not automatically give rise to a presumption of undue influence. The older adult had made an *inter vivos* gift of $120,000.00 to his caregiver. After his death, his nephews sought to have the gift set aside arguing that the caregiver/older adult

[76] 2008 ABQB 9 at para. 77.

relationship was a fiduciary relationship and was sufficient to give rise to a presumption of undue influence. Justice Meiklem disagreed:

> The generic label 'caregiver' does not necessarily denote a fiduciary relationship or a potential for domination. . . The nature of the specific relationship must be examined in each case to determine if the potential for domination is inherent in the relationship.[77]
>
> . . . It is undoubtedly true that Mr. Elder was becoming more dependent upon Ms. O'Brien as time passed and it is reasonable to infer that she became a more significant part of his life after the death of his sister Georgina . . .but taking into account their individual natures, and the development of the relationship, I do not find that the potential for domination of his will inhered in that relationship. . . .[78]
>
> The [nephews'] theory of Ms. O'Brien forming and carrying out a step-by-step plan is quite simply unsupported by the evidence. . . It is a theory which is based solely on the [nephews'] original suspicions arising from the overview of the circumstance of a younger housekeeper/caregiver benefitting from the will of an aged man.[79]

Justice Meiklem also concluded that had he found that the relationship was sufficient to raise a presumption of undue influence, he would have found the presumption to have been rebutted on the preponderance of evidence and that the caregiver did not exercise any undue influence over the deceased:

[77] 2015 BCSC 1266 at para.108.
[78] 2015 BCSC 1266 at para. 111.
[79] 2015 BCSC 1266 at para. 95.

> Ms. O'Brien's relationship with Mr. Elder and the potential for undue influence was scrutinized frequently by the institutional service providers, Ms. Krantz [a case manager with the geriatric mental health team], Ms. Heron[an outreach worker], Ms. Hutton[a home care manager], Dr. Fawcett [his doctor], and to a lesser extent, but in a focussed way, by Mr. Thompson [the drafting lawyer], Mr. Laurie [real estate agent], and Ms. Gibb [financial advisor]. All these witnesses were specifically looking for evidence of undue influence and saw none.[80]

UNCONSCIONABLE BARGAIN

Equity protects the vulnerable from unconscionable bargain. A gift or other voluntary wealth transfer is prima facie unconscionable where:

1) The maker suffers from a disadvantage or disability, such as limited capacity, lack of experience, poor language skills, or any other vulnerability that renders the maker unable to enter the transaction while effectively protecting the maker's own interests; and
2) The transaction affects a substantial unfairness or disadvantage on the maker.[81]

There will be a presumption of an unconscionable transaction if these two elements exist. However the court will look at all of the evidence to determine whether the transaction is fair, just and reasonable.[82]

The onus is on the person attacking the gift or other wealth transfer to prove that the transaction was unconscionable. If the transfer or gift is found to be unconscionable the transaction is voidable and can be set aside.[83]

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[80] *Elder Estate* at para.98.
[81] Poyser at p. 559; *Morrison v. Coast Finance Ltd.* 1965 CarswellBC 140 (C.A.).
[82] Poyser at p. 559.

In a recent case from British Columbia, ***Lessor v. Toll Estate* 2015 BCSC 427**, neighbours of the deceased brought a claim to set aside an *inter vivos* gift of $750,000.00 made by the deceased to her financial advisor on the grounds that it was unconscionable or fraudulent. The Court concluded however that as the neighbours had no claim to the estate of the deceased (although they argued they did) they therefore had no standing to contest the gift to the financial advisor.[84]

UNCONSCIONABLE PROCUREMENT

To prove unconscionable procurement, two elements must be present:

a) a significant benefit obtained by one person from another; and

b) an active involvement on the part of the person obtaining that benefit in procuring or arranging the transfer from the maker.[85]

The onus is on the person attacking the wealth transfer or gift. The leading case in Canada is *Kinsella v. Pask* 1913 CarswellOnt 781 (ONCA), in which an elderly woman was left impoverished after she made personal cheques of significant amounts payable to a lawyer and cashed in favour of the elderly woman's daughter. The mother did not understand that she was making gifts to the daughter, but thought she was entrusting money to the lawyer for safekeeping. The daughter was the procurer. According to John Poyser, however, the doctrine is largely dormant and has been since the late 1800's and early 1900s.[86]

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[83] Poyser at p. 559.
[84] 2015 BCSC 417 at para. 56.
[85] Poyser at p.570.
[86] Poyser at p.599.

CONDUCT BASED ATTACKS

As discussed above, there are three elements required for a valid gift: 1) an intention to donate (donative intent or *animus donandi*) 2) acceptance of the gift and 3) a sufficient act of delivery. Discussed below are attacks on *inter vivos* gifts based on the latter two elements: lack of acceptance and lack of delivery.

LACK OF DELIVERY

Delivery of possession of an object by a donor to a donee, with intention to give, is a valid and irrevocable means of making a gift. However, what constitutes a sufficient act of delivery?

Professor Ziff, in his book, *The Principles of Property Law*, states at pp.143 and 144:

> **Perfect delivery of a gift involves a physical transfer of possession of the chattel from donor to donee.** As a general matter, the donor must have done everything that can be done to perfect the gift. However, one finds copious examples of some lesser form of transfers sufficing, the Courts straining to find a sufficient delivery when the evidence of a desire to make a gift is irrefutable.
>
> **The transfer of possession does not need to be contemporaneous with the expression of the intention to donate**. Delivery may follow the formation or expression of this intention, or precede it, and it can be effective even if the donee was initially holding the property in some other capacity (for example, as an employee).
>
> If goods are delivered to some person acting as the agent or trustee of the donee, this too might be acceptable. Even if the holder is not strictly an agent of the donee, delivery may be found if that person takes possession on behalf of the ultimate recipient. **In any of these situations, the acid tests appear to be whether or not (1) the donor has retained the**

means of control; or (2) all that can be done has been done to divest title in favour of the donee.[87]

In ***Felske Estate v. Donszelman* 2007 ABQB 682, aff'd 2009 ABCA 209**, the Court did not find sufficient delivery regarding a gift of a parcel of land. An elderly woman who owned a farm jointly with her incapable husband (who lived in a care facility) attempted to transfer half of their land to a neighbour who had assisted her for many years. The wife executed a transfer of the property with assistance of the neighbour's lawyer. The lawyer (and not the wife) notified the Public Trustee (who was the Trustee of the husband) that the wife intended to transfer a portion of the land to the neighbour. However the lawyer did not confirm that she had already signed a transfer and no paper work was provided to the Public Trustee. The wife died one month later before the transfer of land was registered.

Section 65 of the *Land Titles Act* RSA 2000 c. L-4 states that a Register cannot register a transfer that has the effect of severing a joint tenancy, unless the Registrar is provided with satisfactory evidence that the joint tenant who hasn't signed the transfer or provided their written consent has been given written notice of the intention to register the transfer.

Justice Sirrs noted that to complete a gift effectively, the donor is obliged to do what can be done. The wife did not provide a copy of the transfer to the Public Trustee, therefore did not do everything that could be done to effect the gift.

Justice Sirrs stated: "I find execution of the Transfer without service of written notice to the other joint tenant of the intention to register the Transfer not to be sufficient delivery. . .*Land Titles Act*, s.65(c), does not require registration to sever joint tenancy – there can be severance absent registration, but where the

[87] Bruce Ziff, *Principles of Property Law*, 4th ed (Toronto: Carswell, 2006) at 148-155

alleged transfer involves a gift of land, in Alberta the requirements for registration shape what the donor must do before a completed gift will be found."[88]

In the case of ***Bayoff Estate* 2000 SKQB 23**, the parties sought a ruling from the Court on whether the deceased had made a valid *inter vivos* gift of certain contents of his safety deposit box shortly before he passed away, specifically whether the contents had been "delivered".

When diagnosed with terminal cancer the deceased began to liquidate the bulk of his investment for the purpose of preparing for the distribution of his estate. He also executed a Will. He then gave the key to his safety deposit box to the applicant (also the executor under his will), in the presence of his two lawyers, and said "everything there is yours".[89] He also instructed the applicant to go to his bank and clean out the safety deposit box and signed a paper authorizing her to do so. However, the bank needed the deceased to fill out certain forms before the plaintiff could access the box. The deceased died before he could fill out the forms. The box contained several bonds worth over $70,000; two deeds to land; and coins. The parties agreed that the land that was the subject of the deeds had already been disposed of by way of his Will.

After concluding that the deceased did not make a *donatio mortis causa* (a gift in contemplation of death), the Court went on to determine whether he had made a valid *inter vivos* gift or whether there was a lack of delivery. The Court found that it was unlikely that there was sufficient delivery:

> Where it is not possible to physically deliver a gift due to its size or bulk, symbolic delivery will suffice: *Lock v. Heath*, (1892) 8 T.L.R. 295 (D.C.). I doubt, however, that simple delivery of a key can or should be regarded as symbolic delivery of a gift contained in a safety deposit box. In *Watt v.*

[88] 2007 ABQB 682 at para. 89-90, aff'd 2009 ABCA 209.
[89] 2000 SKQB 23 at para.1.

> *Watt Estate*, (1988) 1 W.W.R. 534 (Man.C.A.) delivery of a duplicate set of keys to a "thunderbird" boat was found not to be sufficient delivery of a gift. In that case there was no relinquishment of control over the boat.[90]
>
> . . .
>
> In *Beavis v. Adams*, (1995) O.J. No. 383, the Ontario Court dealt with the gift of a GIC by a donor to her son. The mother physically delivered the certificate after completing the transfer form incorrectly. The mistake was not discovered until after her death. In that case the Ontario Court upheld the gift stating that simply completing the transfer in an uninformed manner would not defeat the gift. Here the paperwork allowing [the Applicant] to access the contents was also inadequate, but delivery had not yet been completed. [The Applicant] did not have access to the contents of the safety deposit box. The gift, in my opinion, was unfulfilled. [91] [emphasis added]

However, the Court noted that "[a]n unfulfilled gift will be treated as complete if the donee becomes an executor under the Will of the donor":

> See *Strong v. Bird*, (1874) 80 All E.R. 230. So long as the intent to make the gift continues until death, by administering the estate, the donee receives control over the donor's property and can perfect the gift. That constitutes delivery of the gift.[92]

The Court concluded that the gift was perfected when the Applicant became the executor of the deceased's estate and was able to take delivery of the contents of the safety deposit box.

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[90] 2000 SKQB 23 at para. 14.
[91] 2000 SKQB 23 at para.16.
[92] 2000 SKQB 23 at para. 17.

LACK OF ACCEPTANCE (GIFT DECLINED)

Just as the gift must be delivered, the gift must also be accepted by the donee before it is a valid *inter vivos* gift. The bar is not set particularly high for this element and acceptance is usually presumed.[93] Professor Ziff writes:

> Acceptance of a gift involves an understanding of the transaction and a desire to assume title. This is a requirement that is treated with little rigor: in the ordinary case, acceptance is presumed to exist. The donee may rebut that presumption by rejecting or disclaiming the interest.[94]

In the Tax Court of Canada decision of ***Leclair v. Canada* 2011 TCC 323**, the Court found that a gift failed due to lack of acceptance. In this case, a father transferred property into the name of his 23 year old daughter without consideration when he became indebted to the Canada Revenue Agency ("CRA"). The daughter was never advised of the transfer and only discovered it when she received a letter from the CRA. Immediately, she consulted a lawyer and transferred the title back to her father. The Court observed that there was no doubt that the action taken by the father in transferring the property to his daughter without consideration would be considered, at first sight, as an outright gift. However, the Court concluded that the gift was void *ab initio* as there was no knowledge or acceptance of the gift, and once the gift was known, it was repudiated within an acceptable time by transferring back the property to her father.[95]

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[93] *Weisbrod v. Weisbrod*, 2013 SKQB 282 at para.23, Benquesus v. The Queen 2006 TCC 193 at paras.7-9.
[94] Ziff, supra, at p.141.
[95] *Leclair v. Canada* 2011 TCC 323 at para. 19.

STATUTORY ATTACKS

FRAUDULENT CONVEYANCES

An estate plan intent on depleting one's assets and therefore one's estate prior to death so as to avoid providing for a dependant spouse, child, creditor or other may amount to a fraudulent preference or conveyance. Remedies in that event, may include the use of provincial fraudulent conveyance legislation, such as Alberta's *Fraudulent Preferences Act* ("*FPA*")[96] and the *Fraudulent Conveyances Act, 1571* (UK), 13 Eliz 1, c 5 (sometimes called the *Statute of Elizabeth*) to claw back into the Estate those assets that the testator/debtor may have gifted/transferred away.[97]

Improvident transfers of property may attract the remedies set out in the *FPA* or *Statute of Elizabeth*, in circumstances where estate planning ousts the statutory rights of certain beneficiaries and/or dependants, protected under the provisions of provincial family law legislation or dependant relief legislation, such as Alberta's *Matrimonial Property Act ("MPA")*[98] and *Wills and Succession Act* ("*WSA*").[99] Surviving spouses whose marriages had broken down prior to the spouse's death may be able to have *inter vivos* dispositions set aside under the anti-avoidance provisions of the *MPA*.

Notably, the *MPA* and *WSA* provide spouses and dependants alike with certain claims and remedies on marriage breakdown and on death. Certain questions can be considered:

- Where an individual transfers one's property to others in an effort to defeat such claims, can those who are affected turn to the *FPA to right the wrong suffered?*

[96] *Fraudulent Preferences Act*, RSA 2000, c F-24
[97] Note that legislation varies from province to province.
[98] *Matrimonial Property Act,* RSA 2000 c M-8.
[99] *Wills and Succession Act*, SA 2010, C W-12.2.

- Are they to be considered "*creditors*" within the meaning of the *FPA?*
- At what point does an individual's right to deal with, or dispose of, one's property as one chooses, cross the line from a valid estate plan and trigger the provisions of the *FPA*?

It certainly could be argued that the *FPA* should not apply in appropriate circumstances to *inter vivos* transfers. These types of transfers can arguably be implemented as part of an effective estate plan. If an individual learns that he or she has only a short time left to live, it makes sense to transfer assets to intended beneficiaries to allow them to take control over the assets at an earlier date, rather than to perhaps wait for a grant of probate, and, potentially, to reduce or eliminate estate administration taxes. However where it can be shown that the deceased was aware that the effect of the transfers might be to deny or frustrate the claims of "*creditors"* who would expect to benefit from the deceased's estate, the application of the *FPA* should be considered as a viable remedy.

Much, of course, will depend on the deceased's rationale for effecting the transfer(s).

STATUTE OF FRAUDS

The "statute of frauds" refers to the requirement that certain kinds of contracts must be in writing. One such contract is for the sale or transfer of land. The original English statute[100] is in effect in some provinces while others have enacted their own legislation.

Kavanaugh v. LaJoie (discussed above) examines the application of the Ontario *Statute of Frauds* R.S.O. 1990, c. S. 19 where a son argued that his father made him an *inter vivos* gift of certain lands because the father had promised the land

[100] *Statute of Frauds: An Act for the prevention of frauds and perjuries*, 29 Charles II, c.3 (1677, U.K.)

to him and put his name on title as a joint tenant with him. The father however had subsequently severed the joint tenancy.

The Court held that there was no gift as the three elements (intention, acceptance and delivery) were not made out. The Court also found that such a gift (an oral promise of a gift of land) would "be contrary to the *Statute of Frauds*".[101]

The Trial Division of the Supreme Court of Newfoundland and Labrador also recently looked at the application of the *Statute of Frauds* in a dispute over an alleged gift of property from a father to a son in ***King v. King* 2015 CanLII 62005 (NL SCTD**). The father and son had a verbal arrangement that if the son would return home to Newfoundland from Ontario with his wife, they could live in a house that the father owned. The son testified that the father told him the house was a gift. The father wasn't as clear in his testimony, but admitted that he was going to eventually give the house to his son and that he would "end up with it" when the father died. However, once the son moved home the father and son had a falling out. The father wanted the son out of the house, sought payment for rent and repair costs, and the son wanted the Court to order completion of the property transfer.

Justice Orsborn was not satisfied that the father intended to give the house to his son and daughter-in-law as an outright and absolute gift. Instead, Justice Orsborn found that while the word "gift" was used, the father's intention was to allow the son to live in the house rent-free.

Justice Orsborn also noted that "with respect to a gift of real property in Newfoundland and Labrador, any purported transfer of real property is unenforceable unless the transfer is sufficiently set out in writing. This flows from

[101] *Kavanagh v. Lajoie* 2014 ONCA 187 at paras.12-15.

the provisions of the *Statute of Frauds*, 1677 (U.K.), 29 Cha.11, c.3. . .Had I been satisfied that [the father] intended to transfer – give - beneficial ownership of the house to [the son] the gift would have been unenforceable because of the absence of a transfer in writing."[102]

CONCLUSION AND RESOURCES

In the coming years there will be a significant transfer of wealth between the 'saving generation' and the baby boomers. Some may choose to transfer that wealth while they are still alive and have a right to do so. However, some may not have the requisite decisional capacity to gift their savings away or may be unduly influenced into doing so. Large *inter vivos* transfers should be scrutinized closely. The grounds discussed and cases reviewed provide consideration of the available routes to set aside questionable transfers.

Schedule "A"

Attached as Schedule "A" is a chart of the relevant grounds of attack and what is needed to prove each ground.

Resources

Whaley's chart of Undue Influence Checklist can be accessed:

http://whaleyestatelitigation.com/resources/WEL_Undue_Influence_Checklist.pdf

Whaley's Capacity Checklist: The Estate Planning Context, and a Summary of Capacity Criteria can be accessed:

http://whaleyestatelitigation.com/resources/WEL_CapacityChecklist_EstatePlanningContext.pdf

Whaley's Summary of Capacity Criteria Chart can be accessed:

http://www.whaleyestatelitigation.com/resources/WEL_SummaryofCapacityCriteria.pdf

[102] 2015 CanLII 62005 (NL SCTD)