

**INTERNATIONAL FEDERATION ON AGING**  
**14<sup>TH</sup> GLOBAL CONFERENCE, TORONTO**  
**August 7, 2018**

**Master Class - Concepts of Ageism: Arguments in favour of the need for  
protections**

**ABSTRACT:**

This Master Class will discuss arguments in favour of the need for protections for older adults as a component of any discussion on ageism.

Research demonstrates that abuse or financial exploitation is most often perpetrated by a trusted family member, caregiver, service provider, or other person in a position of power or trust. This makes the job of detecting, and preventing issues even more complicated as it is impossible to know who the trusted persons are who may be assisting an older adult or person of compromised capacity.

From a Canadian legal perspective, cross-provincially our legislation and court processes are not particularly well equipped to easily and cost effectively remedy these very complicated issues and related disputes for either the abused or the persons trying to help.

From a public policy perspective, the maintenance of an individual's fundamental rights, and freedoms, autonomy, and the presumption of capacity must be delicately balanced alongside societal demands of protecting the vulnerable, meaning: those with diminished capacity; those who are under disability; those who are frail, whether through sheer aging and/or illness; those who are dependent; and those who require some degree of protection from predators. Getting this delicate balance right is not easy on any front.

In order to conceptualize the issues and the magnitude of the problems created and identify the key issues, we need to consider for a moment our "greying" society, and demographics. According to Statistics Canada, 2016 represented an important milestone in the history of the Canadian population: for the first time the number of seniors exceeded the number of children - 16.9% (or 5.9 million) vs. 16.6% (or 5.8 million). It is estimated that by 2031 close to 1 in 4 Canadians will be 65 years of age or older and 12 million seniors by the year 2061. This population has been growing rapidly for many years, mainly due to the gradual increase in life expectancy. Similar demographic changes are seen globally.

While it is certainly not the case that all older adults have mental capacity challenges, with longevity comes an increase in medical issues affecting cognition, as well as related diseases and disorders that affect capacity and increase an individual's susceptibility to being vulnerable and dependant. In 2011, 747,000 Canadians were living with cognitive impairment, including dementia, which is 14.9% of Canadians age 65 and older. One in 11 Canadians over the age of 65 currently has Alzheimer's or related dementia. In the United States, Alzheimer's disease is the 6th leading cause of death with no cure-

worldwide and there is another reported case every 69 seconds. Clearly then, many older adults are vulnerable to abuse and require some form of protection.

The panelists will identify, using examples through media, employment gender, cultural and sexual orientation, social themes and theories contributing to ageism. They will then identify key challenges in the law, legislation, dissemination of knowledge, and education and awareness, concerning the individual needs of particular persons in society, which include older adults and those suffering from illnesses, abuses, disability or who otherwise may require protection.

**Master Class Objectives** – The session will be highly interactive with a view to engaging participants to:

- explore whether protection is always ageist;
- address deficiencies internationally in the law, legislation, and public sector that impact society's ability to protect persons who may be vulnerable to abuse; and
- identify and brainstorm remedies, tools, and resources to establish a protocol or forum for an approach to the resolution of capacity disputes.

**Presenters:**



**Kimberly A. Whaley, CS, TEP, LLM**

Kimberly A. Whaley is the founder and principal of the Toronto Boutique Trusts & Estates Litigation Firm, Whaley Estate Litigation Partners (WEL PARTNERS), having started her own law practice in 2005. Kimberly is also a Solicitor of the Supreme Court of England and Wales. Her practice is restricted to the resolution of estate and related disputes throughout Ontario.

Kimberly is a qualified Mediator, mediating estate and trust related disputes within her practice areas. Kimberly was designated as a Certified Specialist in Estates and Trusts Law by the Law Society of Upper Canada in 2006. Kimberly was ranked in Chambers and Partners Canada as a leading lawyer, member of a select group at the very top of the profession in the area of Private Client Disputes, Contentious Trusts, and High Net Worth clients and has been named in the National Law Journal's List of Divorce, Trusts and Estates Trailblazers, May 2017. Kimberly's firm has been ranked annually by Canadian Lawyer since 2014 as one of the Top 5 Trusts and Estates Boutique firms in Canada; and has been recognized since 2012 by Global Law Experts, receiving International awards in Trust and Estate Law in 2014. Kimberly was inducted as a Distinguished Fellow of the Canadian Centre for Elder Law (CCEL). Kimberly has been peer selected annually since 2008 for inclusion in The Best Lawyers in Canada for work in Trusts & Estates and was chosen by Lawday Leading Lawyers as one of the top 60 leading lawyers in Canada in Estates and Trusts.

She was given the Martindale- Hubbell – BV Distinguished Rating in both Legal Ability and Ethical Standards. Kimberly is peer ranked in the Canadian Legal Lexpert Directory. Kimberly is currently the Section Chair of the CBA Elder Law Executive Section and is on the Expert Advisory Focus Group for the Law Commission of Ontario (LCO) Law Reform Project as it relates to Ontario's Capacity and Guardianship Laws and to RDSPs. Kimberly is the Past Chair of the Toronto Branch of The Society of Trust and Estate Practitioners (STEP), Toronto, and Past Director of STEP CANADA. Kimberly is a member of the Estate Planning Council of Toronto. Kimberly has been on the Estate List Users Committee of the Ontario Superior Court of Justice at Toronto since its inception in 2003.

Most rewarding achievement and outright passion is her daughter, Sammi, now age 19. Kimberly has an affection for cooking, baking, cycling with her Trek Cali SLX, and photography with her Nikon D800 and growing collection of lenses. Kimberly also runs marathons and other races in her spare time and has given up on her guitar lessons. Loves Bewitched, Audrey Hepburn and Peanuts – favorite is Snoopy! Favorite Movie: Breakfast at Tiffanys. Favorite Indulgence: fresh home baked hot Chocolate Chip Cookies.



**Andrea McEwan, LLB, MA**

Prior to practicing at WEL Partners, Andrea practiced commercial litigation with a litigation and insolvency boutique in Toronto. Andrea also practiced criminal defence law. She has appeared at all levels of court in Ontario as well as before the Consent and Capacity Board.

Andrea obtained her LLB from the University of Western Ontario where she graduated on the Dean's Honour List. She obtained her Masters degree in psychology from the University of Alberta. In the course of her Masters, Andrea worked in the psychology department at a hospital in Edmonton where she helped organize support groups for persons living with cancer, including those dealing with end of life issues.

Andrea has spoken on topics relating to the legal profession and industry at continuing professional development programs and at mentoring programs for articling, law and undergraduate students.

Andrea has a strong volunteer record in respect of social justice issues. She has served on not-for-profit boards and volunteered for several social justice organizations, including as the co-chair of the Education and Outreach Committee for the Young Professional Council, CANFAR from 2011-2013. She interned at the World Health Organization where she reviewed and commented on draft mental health legislation and policy for several developing countries. Andrea is an active volunteer with Pro Bono Law Ontario, volunteering in the Law Help Ontario office and as duty counsel in Civil Practice Court. She is currently a member-at-large of the

OBA Elder Law Executive and the Civilian Co-Chair for the Toronto Police Service, Seniors Community Consultative Committee (TPS SCCC), Abuse of Older and Vulnerable Persons