

DSF NEWS

DEVRY SMITH FRANK LLP NEWSLETTER FALL 2014 ISSUE

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TRUSTED TRAVELLER PROGRAMS- WHICH ONE IS RIGHT FOR YOU?

BY ASHER I. FRANKEL, B.A., M.S., J.D. | OCTOBER 7, 2014



What is a trusted traveller program? A trusted traveller program provides expedited cross-border travel for pre-screened, low-risk travellers through dedicated lanes and kiosks. The two programs for travel between Canada and the U.S. are Global Entry and NEXUS. This article shall compare both.

GLOBAL ENTRY is a U.S. Customs and Border Protection (CBP) voluntary program that allows for expedited clearance upon arrival at select U.S. airports and at certain airports outside of the U.S. with preclearance facilities, such as Toronto Pearson. All applicants must go through a rigorous background check and interview before enrollment. Although

the program is most beneficial for frequent travellers, there is no minimum number of trips required.

Participants proceed to the Global Entry Kiosks, present their machine-readable passport or U.S. permanent resident card, place their fingertips on the scanner for verification, and make a customs declaration electronically. Any violation of the program's terms and conditions will result in appropriate enforcement action and revocation of the membership's privileges.

Global Entry Eligibility

- All U.S. citizens and lawful permanent residents are eligible;
- Citizens of certain countries with their own trusted traveller programs, such as South Korea, the Netherlands and Mexico are also eligible;
- Canadian citizens are not eligible to join, but may enjoy Global Entry benefits through membership in the NEXUS program, described below.

Global Entry Benefits

- No processing lines;
- No paperwork; and
- Access to expedited entry

benefits at U.S. preclearance facilities abroad, e.g., Dublin, Guam, San Juan.

NEXUS is a joint CBP and Canada Border Services Agency (CBSA) program in which members have crossing privileges at air, land, and marine ports of entry. Under the Western Hemisphere Travel Initiative, a NEXUS card is approved as an alternative to the passport for travel into the U.S. by U.S. and Canadian Citizens.

The program allows pre-screened travellers expedited processing by U.S. and Canadian officials at designated car lanes and airport kiosks. Approved applicants are issued a photo-ID card with radio frequency identification (RFID). Participants in the program can use any of the three modes of passage, where they present their NEXUS card and make a declaration.

NEXUS Eligibility

- Canadian and U.S. citizens or permanent residents are eligible;
- Canadian and U.S. citizens living outside of Canada or the U.S. who recently returned to either country, are now eligible;

- Children under 18, with the consent of a parent or guardian, can be enrolled in the program even if their parents or guardians are not members;
- Applicants may not qualify if they:
 - ◆ are inadmissible to Canada or the U.S. under applicable immigration laws;
 - ◆ intentionally provided false or incomplete information on their application;
 - ◆ have been convicted of a serious criminal offence in any country for which a pardon has not

- ◆ been obtained; or
- ◆ have a recorded violation of customs, immigration or agriculture law.

Applicants only need to submit a one-time application with a one-time fee and the membership is valid for five years. There is no fee for applicants under 18. Qualified applicants are required to travel to a NEXUS enrollment centre for an interview.

NEXUS Benefits

- Expedited passage at NEXUS dedicated lanes, airport kiosks, and by calling marine telephone reporting centers to report arrival into the U.S. and

- Canada by water;
- Border-crossing with minimum customs and immigration questioning;
- Access to Global Entry benefits at no additional cost using the automated kiosks. However, they must submit fingerprints in order to access the Global Entry kiosks.

Comparison

- Canadians are not eligible to join Global Entry but may have the benefits and privileges of both programs through NEXUS;
- An enrollment fee of \$50 for NEXUS provides the benefits of both programs, while the \$100 cost

- of Global Entry provides no NEXUS benefits;
- Global Entry only works for entry into the U.S. and not for entry into Canada.

Conclusion

Although CBP continues to promote a significant country-by-country expansion of the Global Entry program, presently, it makes little sense for travellers eligible for NEXUS to join Global Entry.

Finally, if an application is denied or membership revoked, legal advice should be sought, as reconsideration may be obtained.

NOTICE REQUIREMENTS: ACTING FAST AFTER INJURY IS CRUCIAL

BY MARC G. SPIVAK, B.COMM., B.C.L., LL.B. | OCTOBER 2, 2014



The importance of acting fast in personal injury litigation cannot be overstated.

A recent Ontario Superior Court case, *Seif v City of Toronto*, is a chilling example of the failure to

act fast. In this case, on August 19, 2011, the plaintiff tripped on a gap in a City of Toronto sidewalk, fracturing her left wrist. She was treated at Mount Sinai Hospital that same day for her injuries. One week later, she returned to the scene of the incident with her husband, and they noted a 2.5 centimeter gap in the concrete where she had tripped.

The plaintiff later retained a lawyer, and on December 21, 2011, four months after the incident, her lawyer sent a letter to the city notifying it of the plaintiff's potential claim.

The City brought a summary judgment motion against the

plaintiff with respect to the adequacy of the notice letter. In particular, that the notice letter was not specific enough with regards to its description of the spot at which the incident occurred, and, secondly, that the plaintiff had failed to notify the City of her claim within the 10-day notice period stipulated by Section 42(6) of the *City of Toronto Act*, 2006. If the City were to be successful on the summary judgment motion, the plaintiff would be barred from continuing to pursue her claim.

Unfortunately, the City was successful, solely on the 10-day notification requirement basis, despite the Court's comments that it sympathized with the

plaintiff, and that the notice requirement is "very unfair." Notably, as the court considered, the plaintiff may be excused from missing the 10-day notice period if they can establish that they had a reasonable excuse for doing so. However, the court noted that ignorance of the 10-day time limit is not a reasonable excuse, and that this exception "is not designed to extend the time for a plaintiff whose delay is a result of their indecision or their apathy toward issuing a claim."

As the *Seif* case exemplifies, if you have been injured, you should consult a lawyer as soon as possible, as some claims have short notice requirements.

DSF IN THE COMMUNITY

DSF IRON CHEF CHALLENGE



On September 18 DSF suited up with chef hats and aprons to compete in our first Iron Chef Challenge. With pineapples (the secret ingredient) in hand we all worked together to create, needless to say, interesting concoctions and dishes to serve to the judges. Congrats to Team 7 who won the overall challenge! The afternoon was filled with fun team-building and great times to be remembered for years to come. Thank you to the social committee for organizing this great event!

EDUCATION SESSION IN OSHAWA

On October 6 our lawyers John Schuman, Marty Rabinovitch and Sarah Falzon were guest speakers at the Autism Ontario Office in Oshawa. During this informative session, the DSF lawyers shared their insight and knowledge about human rights and education as it pertained to students who have been identified or have special needs. They discussed what an accommodation is, what the school board's responsibility is, and the process for reviewing how a child is being treated at school.



ESTATE PLANNING PRESENTATION

DSF lawyers Robert Adourian and Rachel Healey were invited by Rod Chin of Edward Jones Financial Services to give a presentation on Estate Planning to his clients. The event was held at the banquet hall of Lara's Restaurant in Toronto on October 18.

UPCOMING EVENT

FAMILY LAW SEMINAR

JANUARY 20, 2015 – INTERCONTINENTAL TORONTO YORKVILLE

To register for this event and for more information, please contact Joanna Esposito
at 416-446-5819 or joanna.esposito@devrylaw.ca

DSF WELCOMES FOUR NEW LAWYERS!



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Areas of Practice:
Insurance Defence and
Personal Injury

MORE JOIN THE TEAM!

CHARLENE BASCOM *Accounting Clerk*

Charlene Bascom joined Devry Smith Frank *LLP* (DSF) in September of 2014 as our new accounting clerk. Prior to joining DSF, Charlene worked at a prominent insurance defence firm in downtown Toronto, where she gained her accounting experience.

LATANIA CHRISTIE *Law Clerk*

Latania graduated from the University of Toronto (B.A. Hons.) and Centennial College where she obtained her Law Clerk diploma. She joined Devry Smith Frank *LLP* (DSF) in 2014 as our law clerk/legal assistant in the commercial litigation group.

DEBRA SMART- HUTCHINSON *Law Clerk*

Debra joined Devry Smith Frank *LLP* (DSF) in October as a law clerk/legal assistant in our tax/estates group. Debra brings many years of experience working with well respected law firms focusing on corporate and tax files.

This newsletter is intended to inform and to entertain our clients and friends. Its content does not constitute legal advice and should not be relied on by readers. If you need legal assistance, please see a lawyer. Each case is unique and a lawyer with good training and sound judgment can provide you with advice tailored to your specific situation and needs. If you would like to receive future newsletters but are not yet on our mailing list, please send your name and e-mail address to: info@devrylaw.ca



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DIVORCE DIRTY DEEDS EXPOSED — CLEARING BANK ACCOUNTS, BADGERING BOSSES AND CONFUSING THE KIDS TOP LIST

PRESS RELEASE | OCTOBER 20, 2014



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Julie Tyas, a Devry Smith Frank LLP lawyer with seven years' experience in family law, is making a plea to Canadian couples to keep it civil. She's acted as counsel on dozens of divorces and hundreds of family law cases, and although some remain amicable, she cites that seven out of ten divorces get nasty during the separation process and a quarter of them escalate to Divorce Dirty Deeds.

A recent poll by Devry Smith Frank LLP showed surprisingly optimistic views on divorce considering Tyas' estimation that only 3 out of 10 divorces keep things clean.

- 74.3% of respondents believe that they can, in fact, divorce amicably.
- A nearly equal balance of men (73.4%) and women (75.2%) believe they can have an amicable divorce.
- The higher the income, the less likely Canadians are to consider a divorce.

So what are the top tactics used by feuding families? Tyas has developed the following top five list of Divorce Dirty Deeds:

1. Taking the Money (Note: most often used by men)
One spouse depletes jointly



held bank accounts and transfers the money into accounts that they hold alone. They then watch the other spouse struggle with bounced cheques and pre-authorized payments. This can also be used as a tactic to hide money and assets, reducing net worth before divorce proceedings.

How it backfires:

It is very likely that you will get caught. It usually results in your spouse successfully obtaining a court order to return the money and could see an order freezing your own bank accounts to prevent it from happening again.

2) Manipulating the Kids

(Note: most often used by women)
One spouse turns the kids

against the other to show the courts that the children want to live with them and therefore they should have sole custody.

How it backfires:

The court has trained professionals to spot this type of deception. If you are caught, this tactic can result in your spouse being ordered sole custody and you receiving limited access rights to the children.

3) Badgering the Boss

Possibly the most short-sighted of Divorce Dirty Deeds, spouses air 'dirty laundry' with their partner's employer, resulting in him or her being fired.

How it backfires:

If your spouse is the breadwinner, you need him



or her to be working in order to obtain child and/or spousal support. It will impact their income and likely result in less support money for you in a divorce settlement. It's basically cutting off current and future support for temporary revenge.

4) Calling the Police (Note: most often used by women)
One spouse alleges a domestic assault in order to gain exclusive possession of the home (and possibly a restraining order, which would impact the amount of time the other spouse gets to see the kids). This temporarily gives the 'victim' de facto custody of the children.

How it backfires:
If your spouse is able to prove that you have deliberately made false claims or accusations of abuse, there is a chance that you will be ordered to leave the family

home. The kids will likely stay in the home with your spouse while you have limited access to your children.

5) Starving out your Spouse (Note: most often used by men)

One spouse refuses to pay support to the other spouse or any household bills until forced to do so. If he or she is the family breadwinner, this could force the other spouse to accept a less than fair support settlement out of financial desperation.

How it backfires:

If the agreement you have entered into is temporary, your spouse's retroactive claims for further support may still be live. This means any final court order could make you pay a higher amount of support retroactively if they are seen to be earning less.

"Sadly, it doesn't end there,"



said Tyas. "There are many more tactics that spouses use to punish their partners. Ultimately they will backfire if a judge sees them as punitive to your spouse and they could end up costing you money, your home, and, in more serious cases, liberal access to and custody of your children. Also remember that

court documents are public record which could affect your reputation and employment."

The Family Law Group at Devry Smith Frank *LLP* consists of seven experienced lawyers who have represented clients before every level of court from Ontario Court of Justice to the Supreme Court of Canada. They devote extra energy to helping kids in difficult circumstances and have advocated the protection of children in several ground-breaking court decisions and cases. Devry's family law lawyers are also experts in complex financial matters.

To contact any of our family law lawyers, please visit www.devrylaw.ca/toronto-family-lawyers.

