

Make a Will Month provides an annual checkup for lawyers and the public

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According to a 2012 survey conducted by lawyers' insurance company LawPRO, 56 per cent of Canadian adults do not have a signed will and 71 per cent do not have a signed power of attorney. The Ontario Bar Association hopes to tackle this issue during Make a Will Month, a public outreach campaign aimed at educating the public about the importance of executing a will and powers of attorney and informing the public about the ways in which lawyers can assist in estate planning.

Throughout the month of November, OBA member volunteers are presenting more than 40 free public legal information sessions at libraries and community hubs in Toronto, Ottawa, Hamilton and Cambridge. Make a Will Month also includes a public campaign on social media, GO Transit and in select Toronto transit stations and shopping centres.

The campaign not only serves to remind the public of the importance of making a will, but it's also a useful opportunity for lawyers to refresh themselves on the tenets of estate planning and to inform themselves about current issues in estates law, including developments on such topics as digital assets, foreign assets and foreign beneficiaries, and planning techniques for blended families.

Digital assets

With the growing prevalence of technology in our everyday lives, drafting solicitors should consider planning for the various types of digital assets that an average person may own.

Some digital assets — such as family photos, social media accounts, personal messages or e-mails, career information or blogs — may not have cash value but may provide an emotional or personal value. Other digital assets — such as gift cards, loyalty points, PayPal balances and cryptocurrency — have a monetary value and can be valuable estate assets.

As a matter of internal policy, corporations such as Apple, Facebook and Google do not release deceased account holders' information to third parties, including family members of the deceased individual, and certainly not without a court order requiring them to do so.

Aside from the disappointment that may arise from the loss of a social media account itself and the content within such an account, an estate trustee's inability to access and manage a deceased's account may increase the risk of identity theft and fraud and could potentially have other negative financial consequences on the estate. If a deceased's electronic accounts are not properly deactivated, an inability to access such accounts could pose potential liability issues for the executor or estate trustee.

Foreign assets and foreign

In our increasingly globalized world, even the average person's estate is likely to encompass foreign assets, or will be distributed among one or more beneficiaries who are resident in a jurisdiction outside Ontario or Canada.

Upon an individual's death, his or her assets may be governed by the jurisdiction in which the assets are located, by the jurisdiction in which the testator resided at death, or by the jurisdiction in which the testator resided at some point in his or her life. Various taxes may be levied by multiple jurisdictions, both on the testator and on the beneficiaries of a testator's estate.

For these reasons, it is important for drafting solicitors to ensure that they are well informed about the nature and location of their clients' assets, and to inquire as to whether any of their potential beneficiaries reside in a foreign jurisdiction.

Blended families

Although family relationships have always been complex, in recent years we have witnessed an evolution of the traditional family unit and a growing number of blended families.

Drafting solicitors should ensure that they are well informed of the family dynamics in order to be able to provide their clients with the most effective estate planning options to suit their individual needs.

Among other things, lawyers should consider any potential dependant relief claims, any potential tax implications, the preservation of a beneficiary's government benefits and structuring the estate plan in such a way that it provides a steady stream of income to support the testator's loved ones.

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