

Estate Planning for the Older Client

A significant and increasing portion of a lawyer's day-to-day practice servicing private clients consists of planning for the older client. The older client presents an array of challenges that are unique to their demographic. More and more, Wills and Estates lawyers are being called upon to acquire, develop and perfect new skills as well as to discover and exploit new resources in order to respond to the complex challenge of servicing the older client.

Estate planning for the older client requires a multidisciplinary approach, given the complexities of life in our times. The cultural mosaic of Canadian society increasingly requires lawyers to be responsive to, and knowledgeable about, their client's ethnic diversity. With ethnic and linguistic concerns becoming more prominent in our communities, older clients are often more rooted in their own culture and language. The lawyer must either possess the personal skills and talents necessary to service these clients or have a network of resources available to call upon for assistance.

For lawyers practicing Wills and Estate Planning for the elder client, they should strive to be more than a scribe inserting the client's instructions into a will precedent. The lawyer should be prepared to facilitate and implement planning for older clients that fulfils their intentions for the devolution of their property on death and for proper administration of their affairs during their lifetime while achieving pragmatic tax efficiency. Ultimately, the estate planning lawyer must ensure an orderly disposition of assets on death that reflects the client's wishes. However, the dynamics of estate planning for the older client are often conditioned by the unique circumstances and goals of the elder client. While the same guidelines and strategies of estate planning apply to the older client as to younger clients, the emphasis may shift because of concerns about capacity, undue influence, failing health of either the client or the client's spouse, the amount of assets and the reality of approaching death.

Statistics show that most elder clients have a will. Yet, these wills must be reviewed often as they may be outdated and/or inadequately reflect the client's present situation. They may also exhibit inconsistencies due to changes in tax, succession or family law. Also, personal circumstances change dramatically as one ages such as death or retirement of a spouse or child, birth of grandchildren, declining health, and even divorce and remarriage. In some jurisdictions, including Ontario, the will becomes void because of a subsequent marriage.

As a general principle, will-planning for the older client is similar in virtually all respects to will-planning for any other type of client. However, greater caution by the lawyer should be exercised for the older client otherwise the will may be open to challenge. Lack of testamentary capacity, undue influence or suspicious circumstances are common modes to attack a will of an elder client. Lawyers must be on guard to protect their elder client against such possibilities.

If you have any questions or concerns about estate planning for elder members of your family or if you wish to have a Will, Powers of Attorney and Living Will prepared, reviewed or updated for yourself or your elderly parent, contact Gary Indech of Rutman & Rutman Professional Corporation at (905) 456-9969 or send an email to gary@rutmanlaw.com.