

## **Questions / Answers The Annotated Will 2017 (Jan12/17)**

### **Question regarding whether being sued in a an estate practice is more likely than in other areas**

According to LawPRO, Wills & Estates claims are the #4 area by cost and the #5 area by count. See the complete Malpractice Fact Sheet at:  
<http://www.practicepro.ca/eNewsletters/pdf/Wills-Claims-FactSheet.pdf>

### **Question regarding a legacy that the will-maker wants used for a particular purposes, but without creating a trust**

A gift is a gift, and if the will-maker tries to put controls or conditions on it, it may fail, or the intended conditions may fail. You can offer to your client using a precatory – non-binding – expression of wishes, either outside the will or on the face of the will, as long as it is clear that the terms are not binding, both to your client and to anyone reading the will (if it is in the will). A wish expressed in a will is often taken very seriously by the legatee.

### **Question regarding whether the executor can refuse to act unless there is executor's insurance in place**

An executor is never compelled to act, so if the estate is sufficiently intimidating that s/he cannot act without insurance, just renouncing might be a better option. The executor would be entitled to purchase insurance in any case – the question is whether the estate will pay for it as a proper disposition from estate funds. Once an executor begins to act, they cannot resign without specific authorization in the will or the consent of the court. Whether buying insurance is a proper expenditure of the estate would not be resolved by an agreement with the beneficiaries, but if they had entered into a binding agreement with the executor, it could be raised on a passing of accounts.

### **Questions regarding First Dealings with Property after Conversion to LTCQ**

Ministry of Consumer and Commercial Relations – Registration Division Bulletin No. 2000-6 regarding the Land Titles Act deals with requirements for the registration of Survivorship Applications and Transmission Applications, as well as requirements for registrations under the “first dealings” exemption. This exemption allows property converted to Land Titles from Registry that is still Land Titles Conversion Qualified (LTCQ) to be dealt with as if it were still in Registry in certain situations upon the death of the registered owner. The Bulletin does not, however, advise what constitutes a “first dealing”.

We are advised that the following registrations subsequent to conversion are **not** to be considered as “first dealings” for the purposes of this exemption: discharges; notices; leases; charges; survivorship applications; and non-arms’ length transfers for nominal consideration (for example, those that change tenure or sever joint tenancy). However, as mentioned in the seminar, reliance on a first-dealings exemption is not recommended, since it cannot be absolutely predicted if a property will still fall under the exemption on the owner’s death.

### **Question regarding Minor Beneficiaries and Primary/Secondary Will Planning**

Planning to minimize Estate Administration Tax through primary/secondary wills is not affected by the age of the beneficiaries under either will. Passing assets through one will or the other will only depend on the requirements of the asset holder. Having minor beneficiaries for whom assets are to be held in trust will not raise a requirement to probate the secondary or non-probate will through which closely-held corporate shares and other assets are to flow.