

The Butler Bulletin

Butler Wills and Estates

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When is it appropriate to file a complaint about your lawyer?

We've been asked about what a client's options are when it comes to responding to a less than satisfactory experience with a lawyer. One of the options is to file a formal complaint with the provincial Law Society. This group is the governing body for all lawyers in the province, and handles everything from ongoing education to discipline to contact information. There is a Law Society for each province. We know an unhappy client is allowed to file a complaint, but when is it appropriate?

The Law Society takes complaints very seriously, and each one results in an investigation. Sometimes this is necessary and is the proper course of action. Other times it is too serious a response for the situation, or the Law Society isn't the right place to deal with the issue. Here are some guidelines to keep in mind when considering whether or not a formal complaint is necessary. Also, remember that all complaints to the Law Society are taken as formal.

Is your complaint related to money?

The Law Society may or may not be the right place for this type of complaint. For example, they do not handle complaints regarding billing and how much your lawyer charges. However, if your complaint is about how the lawyer handled your funds, the Law Society is the right office to turn to.

The rules regarding lawyer's management of trust funds are extremely strict. Considering a lawyer's trust account holds money for someone else, it is both necessary and logical to have stringent recordkeeping regulations. If you feel your lawyer has misappropriated funds held in trust (such as a retainer, or money from a settlement), the Law Society will be able to handle your complaint.

Is your complaint related to the work completed?

If you are concerned that your lawyer has made a mistake, delayed working on your file unreasonably, discriminated against you, or did not complete the work you paid for, the Law Society will accept your complaint. If the lawyer acted appropriately but the outcome of the case is not what you wanted, the Law Society will not accept your complaint.

How do I start a complaint?

The first step is to talk with your lawyer. Many issues are due to misunderstandings, or miscommunication, so it is possible that your complaint can be resolved without escalation. If the relationship has broken down and you do not feel comfortable speaking with the lawyer, you can consult someone else in his or her firm. It is less stressful for everyone involved to resolve any issues.

If the issue cannot be resolved one-on-one, the next step is to send a written complaint to the Law Society. This complaint should contain facts, rather than opinions or emotional responses to the situation. Attach copies of any documents that support your position.

Once a complaint is filed, the Law Society will contact the lawyer involved. He or she will then have the opportunity to respond to your complaint. Remember that the Law Society will not provide a complainant with financial compensation, and that complaining does not guarantee an outcome in either party's favour.

Funny Legal Terms

There is an endless selection of odd legal terms. Many are outdated and no longer used in modern practice. Others are still regularly added to documents such as contracts. Here are a few of our favourite odd legal terms.

Witnesseth; Meaning “witness” but in a much wittier way, however it is also used in contracts to mean “take notice of”.

Promulgate; Defined as “to put forth or to enact”. (E.g. the law was promulgated in February 2019.)

Salmagundi; Made famous by Judge Bruce Selya and used to describe a hodgepodge or mix of items.

Abecedarian; Also made famous by Judge Bruce Selya. This term is used to describe something basic, or fundamental.

Kulturkampf; Used formally by Justice Antonin Scalia of the Supreme Court of the United States as a way to describe culture struggle.

Shibboleth; Promoted formally by Justice Ruth Bader Ginsberg when describing a sign or marker of ones’ position.

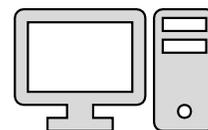
Have you come across any funny or strange legal terms? Send them in to us at chelsea@butlerwillsandstates.com and we’ll include them in the next edition of the newsletter.

Our e-newsletter is now quarterly!

Rather than send out a monthly e-newsletter, we are now distributing a quarterly edition.

This new format is longer and contains more information.

Readers also receive notice of events further in advance.



Ask a Question Online

This resource is intended to assist readers who have a question that is too complicated for a general answer in the newsletter or on Lynne’s blog, but isn’t so in-depth as to need an hour-long consultation with a lawyer.

For a fee of \$50 (tax in), a lawyer will review your question and provide you with an answer within 48 working hours.

There is no obligation to hire the lawyer for additional work, although you may choose to do so. Remember that submitting a question does not mean that you have retained a lawyer.

Any and all information submitted is kept strictly confidential.

How do I know if I should use the 'Ask a Question' form?

If your question requires either of the following, do not use the form:

- A review of documents by the lawyer
- An explanation of the situation that can't be summed up in less than a few paragraphs

If your question can be done without the above, the form is a good choice. If you submit your question and it turns out a consultation would be a better fit, we will let you know.

We welcome any question that relates to wills and estates law, such as tax, estate planning, elder law, adult guardianship, and more.

"I know I'm not supposed to put money on a Memorandum of Personal Effects, but what about coin collections?"

You're right that it is not a good idea to put sums of money on a Memorandum of Personal Effects, because you can turn it into a will by accident. However, coin collections are a little bit different. Items like coin collections are valuable because they are collectibles, whereas something like a bag of \$20 bills is valuable because it is currency.

The same is true of other antique collectibles that aren't specifically cash. Trinkets made of gold are valuable because of their history, not because of the value of the metal they are made from.

Why Have a Will? The Perspective of a Young, Soon-to-Be Lawyer

Why should I, at 26 years of age, have a will? After all, it's not like insurance. I don't need to have a will to be alive as I need to have insurance to have a car or house.

Is it that I'm getting older, or maybe that now I have something to give to somebody? Maybe I want to make sure that my girlfriend or parents are taken care of once I'm gone? Without a doubt, there's no wrong reason to have a will. At my age, I'm younger than most people considering wills. This does not make it less important.

So why did I make a will? First and foremost, it makes the life of my friends and family much easier. Just by having a will they're almost guaranteed to not have to go to the courts to handle my affairs (which costs thousands, if not tens of thousands of dollars). My reasoning doesn't stop there, however. At 26, I don't have much money, own my own home or any properties, or anything of substantial value (sadly). What could I possibly make a will for? Well, I do have five nephews and nieces I would like to consider in the unfortunate event that something happened to their parents. A little money makes a big difference.

Secondly, although I may not have a bag of jewels worth millions, I do have things - many things. Giving my guitar to my nephew who started playing recently is a nice memento. As well, I am an avid beer enthusiast. I want to make sure my collection of international beers, artwork, and related items goes somewhere other than in Robin Hood Bay (I hope you'll thank me one day, Isaac). Although I may not necessarily have "things worth much", I can at least say what to do with them. This is surely better than having my friends and family debate "what would he have wanted done with this?" This hopefully helps everyone speed up the process of handling my estate and distributing my personal items and moving on with their lives.

Lastly, a will gives me the only opportunity I have to appoint someone to manage my estate when I'm gone. On one hand, it lets me pick someone that I trust to do the right thing. On the other hand, it can stop my friends, and more importantly my family, from fighting over "what I would've wanted done". I believe this point is very important.

A will prevents fighting. Sure, you may think your kids, siblings, parents, or whomever will not fight after you pass. Hopefully they won't. But at the very least a will is insurance. It lowers the chances that everyone fights over my self-portrait, which they will undoubtedly do.

Question from a reader:

“My brother has Power of Attorney for our dad now that he has dementia, and he recently transferred one of the properties my dad owns into his own name. Can he do this?”

As with most legal questions, there is no simple yes or no answer. Someone acting under a Power of Attorney (POA) is obligated to act in the best interests of the person who appointed them. On the surface, transferring the person’s property into his own name does not look like your brother is following this rule. However, it is entirely possible that transferring the title to the property is part of your dad’s estate plan. There are a few ways to determine whether or not your brother’s actions are in line with your dad’s best interests.

1. Discussions your dad has had about his estate planning.

Has your dad talked about his estate plans with you or your siblings? If your dad wanted to transfer the property as part of his planning, he may have mentioned it along the way.

Alternatively, your dad may have discussed the transfer with other members of your family.

2. Notes at the lawyer’s office.

Chances are good that your brother used a lawyer to transfer the title of the property. The lawyer should have notes about why the transfer is taking place, such as the property was promised to your brother and he has been making improvements to it over the years.

Any notes that the lawyer has about the transaction will be confidential, and you will not be permitted to view them. However, if you are concerned about the transfer, you can contact your brother. Since the lawyer worked with him, the lawyer can provide him with information about the file.

3. Notes your dad has.

Your dad may have notes about he wanted to do with his assets. Frequently people make these kinds of notes in preparation to meet with a lawyer, so they might be stored with his Power of Attorney. Alternatively, if your dad has a home office or desk, he may have placed notes in there.

The Cost of Advertising for Creditors and Claimants

Advertising for creditors and claimants is something many executors choose to do. It isn’t mandatory, but doing so helps protect the executor from liability down the road. Advertising gives everyone with a legitimate claim the chance to contact the executor before the estate is distributed.

Traditionally, this advertisement is posted in the local newspaper. It is a short advertisement, and simply states that the person has passed away, and gives claimants a deadline to contact the executor to have their claim considered.

Usually the ad runs for a couple weeks, to give everyone a chance to see it.

The cost of running this kind of advertisement varies from one place to another, depending on the size of the newspaper’s readership, whether the community is rural or urban, and the overhead of the newspaper.

In large cities in Newfoundland, it costs approximately \$180 to run an advertisement for one week.

Recently, advertising online has become a popular choice for executors. Sites like NoticeConnect allow the executor to post the same kind of notice online that would go in a newspaper.

The fee for advertising online is about \$150, and the posting lasts for up to 60 days.

For more information about NoticeConnect, visit Lynne’s blog

www.estatelawcanada.blogspot.ca

Does your age impact whether or not you should show your will to your executor?

Nearly every client asks, "should I give my executor a copy of my will?". The answer to this question depends on a few factors.

One of these factors is whether or not you are likely to experience major life changes in the future, such as having children or grandchildren, getting married or divorced, or being promoted at work to a higher pay scale. Changes such as these are usually when people need to update their wills.

While age doesn't necessarily directly impact whether or not any of these things will happen, once people are considered older seniors these events are less likely to occur.

This is important in terms of showing someone your will because you always want to reserve the right to change your documents. Once someone has a copy of your will, you still have the right to revoke your will and make a new one. However, down the road it can be more complicated. Sometimes when seniors change their minds and make new documents that are different from the ones made previously, the people left out of the new document assume that someone must have forced the senior to make the change, or that the senior didn't understand what he or she was doing.

If the contents of the original will aren't shared, this may not happen. While it is always possible that someone could contest a will, when someone doesn't know your previous wishes, there is nothing for them to compare your new document to. Processing the contents of a will can be easier for someone when they do not have expectations.

Did you know?

We have e-books now! Our current selection of e-books can be found on the Resources page of our website.

So far, we have three of Lynne's most popular books, and our best-selling kits will be uploaded soon.



Please feel free to share this newsletter with others.

*If you have any questions, comments, would like to suggest a topic, or to **unsubscribe**, please email us at chelsea@butlerwillsandestates.com*