

The Butler Bulletin

Butler Wills and Estates

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Legal Myths

As we've said before, there is a ton of misinformation floating around regarding the legal system. Most people haven't studied the law, and the most readily available source of information is the media. This is not a reliable source, and much of what Canadians see is American law turned into dramas. We've found the next most common source of misinformation is word of mouth. Something happens to someone, and the outcome is the result of their specific circumstances and actions. This ends up being spread around as the way the law works, even though legal proceedings vary depending on individual factors. Here are some of the most common legal myths we see.

Making a Will Jinxes You

Over the years we have heard tons of people say that they haven't made a will because they don't want to jinx themselves. The idea that making a will can cause something bad to happen to you is just as logical as chain letters that threaten you with bad luck if you don't forward it to fifty of your closest friends in ten seconds.

Often things happen to people after they have made a will, but getting a will made does not cause the event. Sometimes people make a will when they are aging, they are sick, or they are undergoing serious medical procedures. These factors existed before the person made the will – making a will did not cause these factors to happen.

Evidence Can Be Introduced to the Court at Any Time

We've all seen the TV and movie dramas where a lawyer bursts into the courtroom at a crucial moment with a key piece of evidence in hand. There is a rush to get the evidence in the hands of the judge before time runs out. These scenarios have created the myth that evidence can be brought into court at any time.

In reality, the only evidence that can be used in court is that which has been legally obtained and filed on time. If it hasn't been filed, the judge and opposing lawyers haven't had a chance to review it. The legal system is based on rational, logical arguments, not dramatic entrances and emotional pleas for justice.

Anybody attempting to bust into a trial wouldn't get past the bailiff, never mind all the way up the judge.

You Can Leave a Video Will, and Your Lawyer Will Automatically Play It

This myth is another one that arises from the media. Many movies have shown a lawyer playing a video will for a grieving family. Neither of these situations is true. In Canada, our legislation says that wills must be written down. The law doesn't specify what the will needs to be written on, but it must be written.

Secondly, lawyers do not automatically hold a Reading of the Will. The executor must hire the lawyer to do so. The lawyer who wrote the will is not automatically the estate lawyer. Often it works out that the lawyer does both, for the simple reason that the executor knows the lawyer.

This is one of those questions that we get asked over and over again. Here is the answer from Lynne's blog, originally posted August 21, 2014.

As co-executor, am I responsible for the acts of a dishonest co-executor?

If you think being an executor is tough, try being a co-executor with someone you don't like, or don't trust, or simply can't agree with. On top of the work and stress of the estate, you end up carrying the stress of dealing with that other person on a regular basis. What if the co-executor is dishonest or careless and ends up costing the estate money? Who is responsible for that?

A reader recently wrote to me to ask about his legal position as co-executor. Here is his note and my response:

"As co-executor, can I be held legally and financially responsible for costs if a co-executor (who has power of attorney and all other financial and legal documents) runs up debt and runs off with the money from the estate? I don't trust either the co-executor or the author of the will."

I'm assuming for the purposes of answering this question that the testator has already passed away. You have basically two options. One is to accept the risk of dealing with the other co-executor and get on with the executor's work, and the other is to renounce your role as executor.

Renouncing as executor basically means turning down the job right from the start. You can't quit halfway through, as the courts will not allow that, so if you are going to renounce you have to do so right at the start of the estate. Once you have started acting as a co-executor, you have to stick with it unless you get permission to quit. Given the level of distrust you have with your co-executor, renouncing might be a viable option for you.

If you renounce, no liability will attach to you for any actions taken by the executor as he deals with the estate.

Assuming that it's too late to renounce, or that you don't think it's a good idea, you are stuck with your co-executor. The general rule is that a co-executor is not liable for the actions of the other co-executor, so if that person behaves dishonestly or carelessly and causes a loss to the estate, you will not be liable for that. However... and this is a big caveat... you can't just sit by and let him do whatever he wants and think that you will be safe because you're not the one taking the actions.

If you simply sit passively by and turn a blind eye to the actions taken by the co-executor, the court will likely consider you to be just as responsible as the dishonest executor, since you did nothing to protect the estate even though you knew what was going on.

The lesson to be learned? You have to be either all in, or all out. Either you renounce at the beginning or you do your very best as an executor.

If you can show the court that you were carrying on in good faith, doing the best you could in an honest, prudent way and that the other co-executor acted wrongly without your consent or knowledge, then you will likely not be held liable for his or her wrongdoing.

It's a complex answer to what seems a simple question, but this is a complex area of estate law.

WILLS WEEK 2017

Wills Week 2017 is just around the corner. This is our third annual event, and this year we've made some changes. Not only do we have some great presentations lined up, we've also got a tradeshow featuring businesses involved in the estate planning industry. Wills Week has everything you need to get started on your estate planning – from wills and trusts to planning for incapacity.

Wills Week connects consumers who are looking for information about estate planning with the businesses that have the info they need. Estate planning involves much more than simply getting a will made - it also includes dealing with finances, the potential for incapacity, what the options are when someone is no longer fully independent, and what family members will have to deal with once someone is gone.

There is no fee to attend, and you don't have to register in advance. There is plenty of free parking at the hotel, both in front and on the side. Complimentary refreshments will be available throughout the afternoon. Several people have said they are going to come at noon and stay for the afternoon to take in all the information. There will be seating available if you'd like to come for the whole event.

This year's event includes presentations from:

Seminar Schedule



12:15 - Butler Wills & Estates

Top 3 Estate Planning Mistakes

1:00 - CIBC

The Role of a Trust Company

1:45 - Alzheimer Society

Info About Alzheimer's

2:30 - Motivated Maids

Employment Opportunities

3:15 - Leave a Legacy

Charitable Giving in Your Estate

4:15 - Motivated Maids

How a Cleaning Company Can Help in an Estate

**Topics are subject to change*

Alzheimer Society
NEWFOUNDLAND & LABRADOR



Strange Canadian Laws

Canada has had some bizarre laws over the years. While many outdated rules are replaced with more relevant laws, others are still enforceable under *The Criminal Code of Canada*. Here are some of the strangest Canadian laws that are still in effect.

[Pretending to Practice Witchcraft](#)

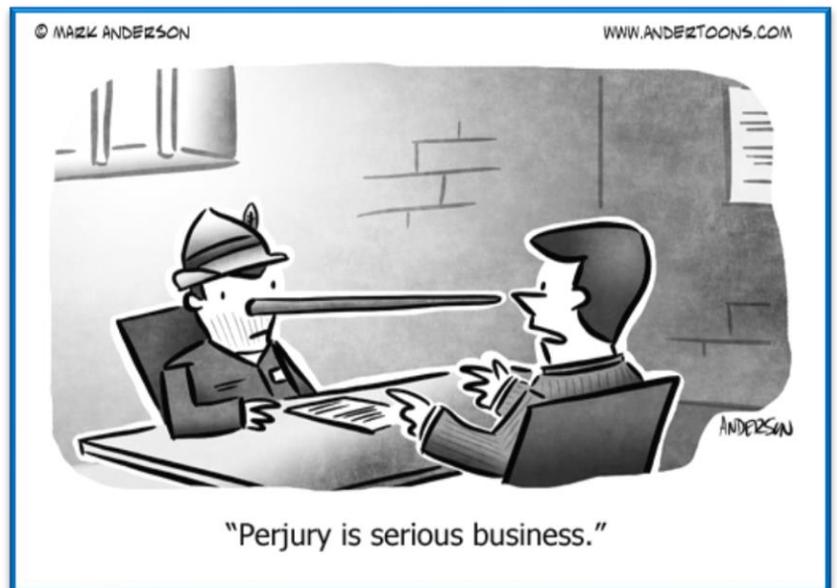
This law stems from Britain's *Witchcraft Act, 1542*. This law was updated in 1736 to say that practicing witchcraft is OK, but pretending to practice dark arts is illegal. Violating this law is no longer punishable by death – rather, anyone convicted can face up to a year in prison.

[Using Too Much Change](#)

We've all been held up in line by someone counting out their entire change purse onto the counter. While we wish these people would hurry up, we probably don't think to turn them in for breaking the law. Not much would happen if you did – the 1985 *Currency Act* states how much change is too much based on the dollar value of the purchase, but there is no punishment attached.

[Challenging Someone to a Duel](#)

Sorting out your problems in a duel is not only dangerous, it's also illegal. Challenging someone to a duel can get you up to two years in jail, according to the *Criminal Code of Canada*. The law is pretty strict about preventing duelling – provoking someone into challenging you to a duel and accepting the challenge are both illegal.



[Stealing Oysters from Their Beds](#)

Apparently, the general rules around theft aren't enough to stop rampant oyster-bed raids. Canada adopted this law from Scotland approximately 200 years ago, and it hasn't yet been retired. The law says that if there are oysters on someone's property, that person is considered to have a special interest in the oysters and no one else can take them.

[Leaving Your Ice Fishing Hole Open](#)

Unlike many of the other odd laws on this list, this one makes some sense. Leaving your ice fishing hole open once you're done is considered a danger to anybody who might be in the area. If someone were to fall into your hole, you could be charged with causing bodily harm (or manslaughter if the person doesn't survive). The question remains – what do you cover it with?

[Participating in an Immoral Theatre Performance](#)

This law applies to both managers/agents and performers. Section 167 of the *Criminal Code* says that anyone who is involved in this kind of performance can be found guilty. The charges come with heavy fines.

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*