

The Butler Bulletin

Butler Wills and Estates

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Equality and fairness aren't the same in estate planning.

We hear from just about every client that they want to treat their kids fairly. The next statement is usually something along the lines of "I want to divide everything equally among my kids". On the surface, these two statements are the same. However, in estate planning, "fairly" doesn't necessarily mean "equally".

Many parents have lent their children large sums of money during their lifetime, whether it be for university tuition, a car, or a down payment on a house. The law considers this to be an advance on their inheritance. For example, say a couple lends their son \$10 000, but does not do the same for their other kids. In order to treat all their children equally, the child who got the loan needs to get \$10 000 less than his siblings when their parents pass away.

This makes it equal, but is it fair? Mathematically, yes, but that isn't the only issue to consider. When the time comes for the one sibling to receive less than the others, will it feel fair?

Now take into consideration that many parents lend their kids money with no expectation that it be paid back. Is it still fair for the child who got the loan to receive less than his siblings, even though the whole family may know that it was actually a gift?

We've also met with several couples who have one child that needs more financial help than the others. In some cases, this is due to factors like addiction or mental health issues, and in others it is due to a disability or injury. Dividing an estate equally among the children means everybody gets the same amount, regardless of any other factor such as whether or not all of the children are on the same playing field.

The term "equal" is easy to define. However, what is fair is different for each family. No two estates are exactly the same, just as no two families have the same dynamic.

Giving each of these children the same amount makes it equal, but it isn't fair for the child who is unable to work due to a mental or physical disability.

Conversely, what if you have four kids, one of whom doesn't work, lives in your home rent-free, and has never attempted to start a career or hold a job? Is it fair for that child to receive the same portion of your estate as the three who are hardworking?

At the end of the day, deciding what is equal and what is fair is difficult for everybody. There are several factors to consider, including family politics, history, and the dynamic between everyone involved.

THE LAW SHOW

Starting in April, Butler Wills and Estates is going to have its own weekly show on VOXM! So far it is tentatively named "The Law Show". We'll cover a variety of topics related to wills and estates law, including:

- Probate
- Enduring Powers of Attorney
- Elder law
- Financial abuse
- Business succession planning
- Executor's duties
- Land registry
- Estate administration
- Trust companies
- Common mistakes

We're also going to discuss topics that apply to the legal system in general, such as:

- Understanding a lawyer's bill
- Legal terms
- Going to court
- What to do if your estate lawyer is no longer in practice

If there are any topics you'd like us to cover, please email your suggestions to chelsea@butlerwillsandestates.com

Estate Tax Returns

Part of the executor's job is to file tax returns for the person who has passed away. Here is a list of returns that need to be filed by the executor. Keep in mind that executors are allowed to hire professional help when it comes to taking care of the estate, so if filing these taxes seems overwhelming you are well within your rights to hire an accountant. This list is sourced from Lynne's blog, www.estatelawcanada.blogspot.ca

1. T1 Terminal Return for the year of death. This is a **personal tax return** for the person who died, as opposed to his or her estate. It will cover the period starting on January 1 of the year of death and ending on the date of death. For example, if the person died on March 15, 2010, the return would cover the period of January 1, 2010 to March 15, 2010. This return is due on the later of either:

- a) the normal filing deadline of April 30 of the year of death, or
- b) six months after death.

2. Any T1 Returns for the deceased person for previous years that the deceased has not filed. They are due six months after death, but since they are already late and therefore subject to penalties and interest, it is best to get them filed as soon as possible.

3. Rights or Things Return. **This return does not apply to every estate**. It is a return that is filed when there were amounts due to the deceased person which were not paid to him or her yet at the date of death, and therefore were not included in the last T1 return. Examples of the amounts are unpaid work-in-progress for a professional person, dividends that were declared but not paid, and farm crops that were not yet harvested. This return is due on the later of either:

- a) one year after death, or
- b) 90 days after assessment of the T1 Terminal Return.

What is Estate Administration?



The role of administrator is very similar to that of executor. We all know that an executor is chosen by someone while he or she is still alive, and named in that person's will as the individual who will take care of the estate. When an administrator is needed, it is because someone died without a will.

Since there is no will naming someone to take care of the estate, someone has to volunteer. There are specific rules as to who has priority to do this, based on factors such as whether or not the deceased person was legally married, if his/her parents are still alive, etc.

For example, if someone dies who was legally married, his/her spouse is the first person with the right to be the administrator. If the person wasn't legally married, his/her children are the first to have the right to apply. If there is no spouse and no children, his/her parents have the right to apply.

Once it has been determined who will be volunteering to be the administrator, this person needs to apply to the court for permission to perform the same duties as an executor. The application is similar to that of applying for probate, in that there is a package of forms that goes to the probate registry at the courthouse, there is a fee paid based on the value of the estate, and a judge signs a grant.

Often a situation arises where the person who has the first right to apply doesn't want to be the administrator. This problem is solved simply by having this person sign a consent form stating that he or she is alright with another person being the administrator.

Applying for administration can be complicated due to the amount of legal paperwork involved. Many people choose to hire a lawyer.

However, if the estate is fairly straightforward and you feel comfortable managing the application alone, you can apply to the court without the aid of a lawyer.

What forms do I need to apply to be an administrator?

The exact forms you need will depend on the situation, such as if a previous administrator was appointed but is unable to complete the estate, if there is no will, or if a will was made but did not name an executor.

The most common situation is one in which a person passed away without a will. The following forms are needed to apply for administration in this situation.

1. Notice of Application

This form tells the court who you are, who has passed away, and what you are applying for. It is the first item you submit to the court. Five full business days later you can submit the rest of the application.

2. Petition

This is the main document in your application. It includes who you are, who passed away (as well as when and where), the value of the estate, who the next-of-kin is, and who is entitled to a share of the estate.

3. Affidavit

An affidavit is a document that you swear to be true. In this case, you are swearing that you know what is in the petition, and that it is true.

4. Inventory

This lists all of the assets in the estate, with their value on the day the person died. The total amount is what the court fee is based on.

5. Oath of Administrator

Essentially, the oath is a document where you swear to administer the estate to the best of your ability. You swear to be honest.

6. Bond

Since the deceased person did not get to choose someone they trust to handle their estate, the person applying needs to be bonded. You can get two people to sign as sureties, or you can obtain a bond from an insurance company. Either way, the bond covers the debts of the estate in the event that the administrator takes off with all of the money in the estate.

7. Order

This form is what the judge signs to grant the administration. It says who you are, who passed away, and that the order is approved.

Is there a topic you'd like to hear about on our podcasts? Let us know on our website or by emailing

chelsea@butlerwillsandestates.com

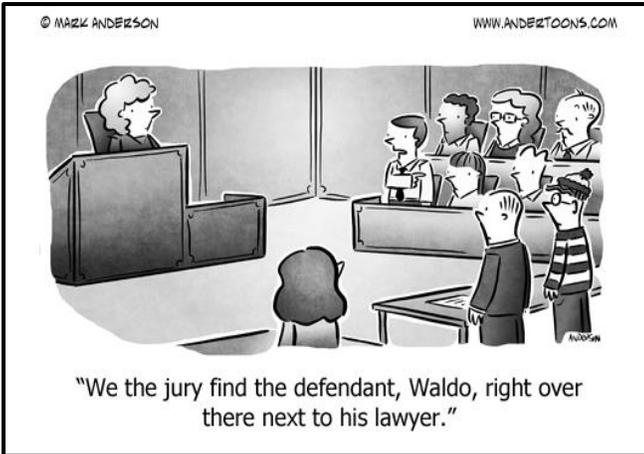
Letters of Administration Kit

If you need to apply for Administration on an estate and you'd like to do it yourself, consider using our Letters of Administration Kit.

We developed this kit in our office for people who want to do the application themselves without the aid of a lawyer. It contains all of the forms you'd need in each situation, as well as instructions for filling them out.

The forms can be downloaded for free from the Supreme Court of Newfoundland website, however they do not come with instructions.

If you'd like to try the kit, it is available online or in our office for \$40.00



Is it ever too late to change your mind about going to court?

We all know that settling the issue outside of court is significantly less expensive than a trial. Of course, this isn't always an option. If you end up on track to go to court with your lawyer, is there a point where it is too late to back out?

Essentially, unless your lawyer is already in the courtroom talking to the judge, you can back out of the decision to take the matter before a judge. If the matter can be settled even five minutes before court is called into session, you can change your mind.

Did you know...?

In 1909 the Catholic Archbishop of Newfoundland sent out a Pastoral Letter to every church during Lent. This letter determined what was and was not acceptable during Lent that year.

One of the main items forbidden was the "new forms of moving pictures". It didn't stop at movies – Archbishop Howley also included balls, dances, parties, and any other theatrical performances.

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*