

The Butler Bulletin

Butler Wills and Estates

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Is Probate A Money-Grab?

Recently we had a phone call from someone involved in an estate. A relative had passed away, and the bank had told the caller that he would need to get Letters of Probate in order to access the deceased person's funds. The caller was upset because the deceased person had a will directing him to manage the estate, and felt that this should be sufficient.

This is a question we get fairly often. In this case, the caller felt that the fees charged to obtain probate – both the ones charged by a lawyer and the ones charged by the court – were simply a way for the legal system to get more money out of people. According to the caller, the deceased person had paid for a will and that should be enough.

Completing probate isn't just about paying fees, although that is part of it. Like any other business, lawyers charge to provide their services. Consumers do have the choice to apply for probate on their own without the assistance of a lawyer, so it is not mandatory to pay a lawyer's fee to get probate.

The other amount is the probate fee charged by the court. This is unavoidable, whether you use a lawyer or not. Almost every article about estate planning suggests ways to avoid paying probate fees, and this has given the public the idea that probate fees are horrendous, and should be avoided whenever possible.

The probate fee is based on the value of the estate – the more assets the person had, the higher the probate fee. Someone with very few assets will pay a small probate fee. Also, the fees are not the same from one province to another, and Newfoundland and Labrador has one of the lower fees on the scale. Here, the court charges 0.6% of the value of the estate, plus \$114. For an estate worth \$500K, the fee is only \$3114.

In most cases, the desire to avoid probate stems from not really understanding what probate is. Probate is a process wherein a bundle of documents, including the will, is submitted to a judge for review. The documents tell the court who is involved, what is in the estate, and what the deceased person's wishes are. Once the judge has read all of these

documents, he or she can sign an order saying the will is valid, and the executor is indemnified.

Essentially, this is the court's way of saying it is OK for institutions to give one person's money or other assets to someone else. Without probate it is a huge risk for banks or the land registry to take someone's assets and give them away.

The will says who the deceased person wanted to be in charge, and what they want that person to do, but it can't give anyone the legal authority to do the job.

Probate is like a system of checks and balances in the court. Anybody could make a fraudulent will and take it to a bank in order to get someone else's money. Imagine how angry you would be if you found out your bank had given away your life savings.

Having probate protects everybody involved. The system isn't perfect, but it is better than not having anything in place. After all, paying a couple thousand dollars in probate fees is small potatoes compared to what a lawsuit would cost.

Helping Dementia Patients Stay Hydrated



In August metro.co.uk posted a story about Lewis Hornby, an engineering student at the Royal College of Art. Lewis has invented a treat to help people with dementia stay hydrated.

Lewis noticed that the residents of his grandmother's care home were willing and able to eat with their hands, whereas eating a full plate of food with utensils was much more challenging.

The sweets invented by 24-year-old Lewis are made up of more than 90% water, which means each time someone eats one they are fending off dehydration. Each sweet can easily be eaten in one bite, are brightly coloured, and have the consistency of jelly.

This is a huge step forward in the care of people with dementia. Often people with dementia forget to drink water or can't remember where to find water. Sometimes the part of the brain that signals thirst doesn't function properly, leading to severe dehydration.

Common symptoms of dehydration include lethargy and sleepiness, along with confusion. Since these symptoms also occur with dementia, dehydration can go unnoticed.

At this time the sweets aren't available for purchase, as they require additional research and Lewis needs assistance in terms of funding.

To contribute to Lewis' project, visit Lewis' JustGiving page [here](#). He has almost reached his goal, so hopefully he will be able to make the product widely available soon.

Intergenerational Joint Assets

This is a topic that has caused a great deal of confusion for both bankers and clients. As we've said before, assets that are owned jointly between people of two generations (e.g. parent and child, grandparent and grandchild, etc.) are not treated the same way as assets owned jointly between people of one generation (e.g. spouses).

In 2007, the Supreme Court of Canada ruled that intergenerational joint assets are considered part of the older person's estate, unless it can be proven that the older individual intended for the younger person to own the asset after the death of the older person. The act of creating the joint account is not sufficient proof of the older person's intentions, since the account could have been created for convenience. This ruling came about because of an increase in the number of situations in which an older individual was taken advantage of.

This situation is based on the older person owning the account first, and adding the younger person as an owner at a later date. This often happens when the original owner starts to have trouble with the banking and needs help. In some cases, the older adult does intend for the younger one to keep the account, but this intent needs to be proven in order for the younger person to keep the funds in the account. There are a few ways this can be done:

- Provide bank records showing you made regular deposits into the account, such as direct deposit of your payroll
- Ask a bank employee if there are notes from when the account was made joint to see if they have a record of the intent
- Contact the lawyer that made the older person's will to see if he or she has notes about the account

Additionally, the situation is different if the younger person owned the account and the older person's name was added. In this case, the account still belongs to the younger person when the older one passes away.

It seems there is always some sort of scam going on these days.

Whether it be a fake lottery, phishing scams, or someone pretending to hold your private digital documents hostage, the amount of ways to fraudulently take someone's money are endless. Most recently, I came across a scam in which a telephone caller pretended to be from a financial agency.

The caller was an automated phone recording, which said that it was from the Federal Criminal Defence, and that I had to pay the money I owe immediately. If I ignored the message – which was apparently the second and final attempt to contact me – they would consider me guilty of all sorts of federal financial crime. As scams go, this was a rather pathetic one. However, some scams are much more convincing, which means people are more likely to fall for them. Here are some tips to help identify whether or not a phone call is legitimate.

Recorded Messages

Some collection agencies do leave pre-recorded messages instead of having a real person call. However, these messages are intended to encourage you to call back and arrange to make a payment. With scams, the messages are meant to scare you into calling back and telling the person your information.

Also, the messages left by legitimate agencies are clear and easy to understand. They might leave a file number, an individual

HOW TO TELL IF A COLLECTIONS PHONE CALL IS A SCAM

to contact, or the website address where you can find out more information. They will also likely leave their hours of operation. Scam calls most often leave one phone number that they repeat several times, without giving you any other option for contacting them.

The Tone of Voice

Whether it is a real person on the other line or a recorded message, a real agency will speak to you in a calm, professional tone. Scammers are focused on scaring you and making you think that you have no option but to talk to them in order to avoid serious consequences.

Fraudulent callers often use an angry tone and use aggressive words. Some of the most popular choices are to tell you that you will be responsible for legal costs, will be considered guilty of any number of crimes, or that the amount you owe will be significantly increased. Keep in mind that none of these things are possible – a bank or government agency may contact you saying that if you don't answer them you will be responsible for any legal fees associated with recovering an outstanding amount owing, but this certainly wouldn't be during the first phone call.

How the Caller Starts the Call

Genuine callers, such as Canada Revenue Agency, will identify themselves and make sure you know who you are talking to.

If you don't understand where they say they are calling from, ask them to repeat the name. If it still doesn't sound familiar, Google it. It may be a company you haven't heard of, or it might be a scam. You can also ask them to spell the name of the company, or to give you the website address.

If you think it might be a scam, ask the person to explain what the company does. A legitimate caller will be able to do this, whereas a scammer will likely try to redirect the conversation to getting money out of you.

Check the Phone Number

Google the phone number that shows up on your caller ID, or the number the caller gives you. If it belongs to somewhere reputable, it will show up in a listing along with the name of the company.

If it is a scam, the majority of the search results will likely be sites like *Who Called Me*, where users can post the odd phone numbers who called them.

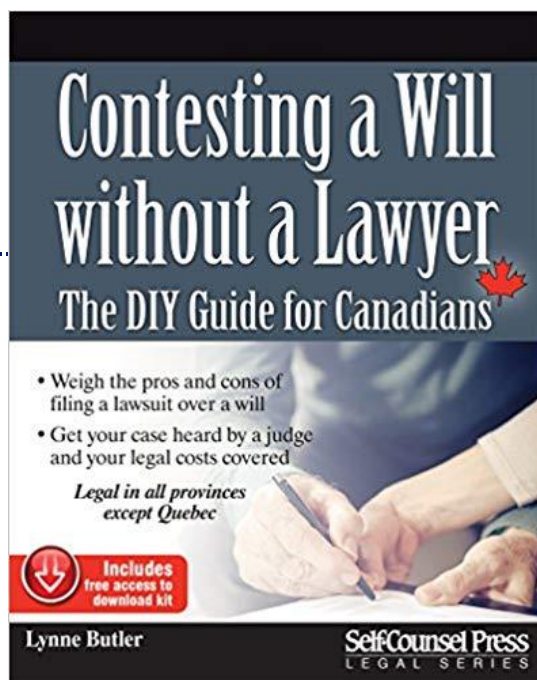
Scammers who pretend to be from places like CRA will give you a phone number that sounds like it could be real. If you aren't sure, tell the person you will have to call them back. Hang up, and dial the phone number on the government's website, or in the phonebook. This number will go to the real agency, and they can tell you whether or not the call came from them.

CONTESTING A WILL WITHOUT A LAWYER

Lynne's most recent book is now available! *Contesting a Will without a Lawyer: The DIY Guide for Canadians* can be found at Chapters and Indigo. You can also pick up a copy directly from the publisher, [Self-Counsel Press](#). Our website will also have copies available for purchase within the next couple weeks.

This guide helps individuals through the process of contesting a will in Canada, from determining the legal grounds on which a will can be contested to the forms you need and how to complete them. The book also includes downloads for forms and checklists to help you make sure you don't miss anything.

With this guide you'll get a better understanding of the court process, how long it takes, what the pros and cons are, and whether or not your case is one that you can handle on your own. Contesting a will is a long process that requires a great deal of research, time, and paperwork. Using this kit or guide can help you navigate the legal system.



Please note that this guide is legal in all provinces except Quebec.

Alberta Probate Kit, 2nd Edition
is now available!

The second edition of Lynne's best-selling book, *The Alberta Probate Kit*, is now available! Order your copy directly from Self-Counsel Press, or get one of the limited copies available on our website.

Are you interested in attending an interactive webinar?

We're gathering information about which topics our readers are interested in learning more about in order to provide consumers with an interactive webinar. This session will be held live online on a platform that allows us to answer attendee's questions in real time.

Please visit www.butlerwillsandestates.com to vote for the topic you would be most interested in seeing as a webinar. Keep an eye on the website and the newsletter for the dates for the presentation.

Did you know...?

Nominate Lynne's blog for the Best Legal Blog contest! Click [here](#) to submit your nomination.

Blog Title: Estate Law Canada

Blog Address:
www.estatelawcanada.blogspot.ca



Mediation in Newfoundland

Recently our office was contacted by a person looking for information about mediation for an estate issue. She had been told by more than one lawyer in Newfoundland that this province does not do mediation. This is not the case. While it is true that Newfoundland does not have mandatory mediation as part of the dispute resolution process, mediation is still an option. Below is some basic information about the differences between mediation and litigation. Mediation isn't right for every situation, but it may work for your family.

MEDIATION	LITIGATION
Is less expensive than litigation.	Can cost thousands of dollars per person.
The bill is split equally among all the parties.	Each person pays their own lawyer.
Is based on finding a mutually-agreed upon solution.	Is based on arguing a case in front of a judge who makes a decision.
Focuses on working together to find a solution.	Focuses on undermining the other parties.
All information is kept private.	Begins at a level of court that is open to the public.
Each person gets an opportunity to speak.	Each person is represented by a lawyer and does not have an opportunity to say anything.
Can be concluded in a short amount of time.	Usually takes several years to reach a conclusion.

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*