

BOWLEY LEGAL NEWSLETTER

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Yes, we can— As our client base grows, ages and becomes more sophisticated, the demand for more specialized legal services becomes acute. In order to ensure that clients' needs are met with the attention they deserve, that the right hands are on the right job, and that the price point is a fair one, we are developing a network of lawyers who have the time and expertise to provide the care our clients have come to expect, but across a full spectrum of legal needs. These professionals work seamlessly through our firm.

Whether semi-retired, stay-at-home Moms, part-time in-house counsel or individuals having simply chosen to get out of the rat race, there are many sharp legal minds ready to be applied to thorny issues. All of this to say that your first call should be to us— we likely have just the right person for you.

A Job for Old Men— Abdul Hakim used to teach high school in his native Libya. Today he is clearing landmines. "This is a job for old men, quiet and careful," he says. "It is my duty to clear out these fields, for the children, for people, no matter even if it is dangerous. You have to calm down, and take a deep breath, go slow, because you know, here your first mistake is your last mistake."

If thou wouldst conquer thy weakness,
thou must not gratify it. **William Penn**

Joint bank accounts— There are many good reasons for seniors to have one of their adult children go on a bank or investment account as joint owner. There are also many bad reasons.

Convenience is generally the best reason, allowing for the operation of the account where the parent is a shut-in, or in Florida. Avoidance of Estate Administration Tax is another reason (although not nearly as big a deal as most people think, and often counterproductive.)

One of the main dangers is that it can lead to hard feelings and family rifts after the death of the senior. Consider this scenario— Jennifer drops in to see Mom every day, helps make meals, supervises medications, keeps the place clean, drives Mom around to events, and in general is the perfect daughter. The rest of the kids, for lots of good reasons, aren't remotely as helpful. For years, Jennifer has been

joint on her Mom's bank account. Mom dies, and Jennifer claims the \$139,824.34 in the joint bank account by right of survivorship. The other kids show up, looking for their share. They hire lawyers.

Or how about this case: While Mum is still alive, Jennifer's husband sues her for divorce, and claims that Jennifer's interest in the joint account be included in her Net Family Property. Or this one: Jennifer, a stockbroker, is successfully sued by a client for some bad advice. The client garnishes the joint account. Or even this one: Jennifer is a compulsive gambler, and you guess the rest.

A discussion of joint accounts is an important part of the will and estate planning process in your lawyer's office. One of our recommendations is that, wherever possible, the joint ownership situation be discussed openly within the family and that intentions be recorded.

A compromise is the art of dividing a cake in such a way that everyone believes he has got the biggest piece. **Ludwig Erhard**

Life Insurance: Write it and forget it?— As everyone knows, squirrels have a habit of burying nuts and forgetting the location— many trees get their start this way. Unfortunately, the same thing happens with life insurance— the owner names a "designated beneficiary", then forgets about it. As time passes, circumstances change.

In several recent cases a former spouse, long divorced, remained the named beneficiary. Generally, the courts refused to intervene, but rather upheld the clearly written contractual intent of the life insured.

The moral of the story is clear— owners of life insurance policies need to review them from time to time for many reasons, not the least of which is to ensure that you have the right beneficiary.

Interpleader— You are holding money or property, but it isn't yours. It belongs either to Susan or to Jim, but they can't agree. They squabble, leaving you in an awkward spot. By your seeking an order of interpleader, they will be forced either to litigate the matter or resolve it, and in the meantime, leave you alone.

In Toronto, a man phoned a lawyer and asked him what he would charge to answer three simple questions. "Five hundred dollars," was the answer.

"Five hundred dollars!!! Don't you think that's a little steep?"

"No, not really," replied the lawyer "now, what's your third question?"

Testamentary freedom— Can you leave your property to anyone you wish? You might be surprised at the limitations.

If you own assets in a Civil Law jurisdiction, such as France or Italy, you will encounter “forced heirship” rules which dictate that some or all of your estate must be left to certain family members, in specific proportions. Some Common Law jurisdictions, such as British Columbia, are beginning to tilt toward a test of “moral obligation”. Those courts are showing themselves increasingly willing to re-write the will of the deceased to suit what the judge thinks the testator should have done, even where it is clear the testator had other ideas. While Ontario has generally avoided such arbitrary post-mortem re-writes, nobody should think we have complete testamentary freedom.

In Ontario, the law allows you to dispose of your property in an unfettered way, so long as you don't ignore dependents. Under Part V of the Succession Law Reform Act, your estate will be held to account if you have not made adequate provision for those who are dependent on you in any way.

While it is obvious that you need to make provision for a spouse and children, the definition of “dependent” goes quite a bit further. The Act defines a dependent as any person of a specific relationship who you were actually supporting or had a legal obligation to support at the time of your death. This class includes children regardless of age, spouses, former spouses where support is required to be made pursuant to separation agreements or court order, parents, grandparents and siblings, provided there is a dependency.

If any such person can satisfy the court that, at the time of your death, they were your dependent, they can seek an order for support from your estate. The factors the judge will consider include the dependant's present and

likely future assets and means, their capacity to contribute to their own support, their age, physical and mental health, their accustomed standard of living, the proximity of relationship, any contributions they may have made to your welfare, property, business or career potential, your circumstances at the time of death, any agreements between you and the dependant, any other evidence considered necessary or proper, and any reason stated by you in writing as to why the dependant was not provided for.

As you can imagine, these are some of the factors which are not considered by the do-it-yourself will kits.

Maxwell's Rules for Talent

1. Belief lifts your talents.
2. Passion energizes your talents.
3. Initiative activates your talents.
4. Focus directs your talents.
5. Preparation positions your talents.
6. Practice sharpens your talents.
7. Perseverance sustains your talents.
8. Courage tests your talents.
9. Teachability expands your talents.
10. Character protects your talents.
11. Relationships influence your talents.
12. Responsibility strengthens your talents.
13. Teamwork multiplies your talents.

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