



The Adviser

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Wills and trust companies

From time to time a lawyer will be contacted by a trust company and asked to prepare a will for an individual who has decided to have the trust company as the sole executor or one of the executors of that individual's estate. This situation was discussed recently by both the Professional Conduct Committee and Convocation.

Lawyers are reminded that in this situation they are under a professional duty to interview the individual (who is now their client) to confirm the instructions received from the trust company and to determine that the individual in question has testamentary capacity.

Failure to carry out this professional duty can have serious ramifications, both civil and disciplinary, for the lawyer.

Borrowing from clients prohibited

The Law Society is currently considering proposals to tighten up the absolute prohibition against lawyers borrowing money directly from clients unless the client is a lending institution such as a bank or trust company. The changes would be further to the 1981 amendment to Rule 7 of the Rules of Professional Conduct that eliminated the practice of borrowing from a client where the client received independent legal representation.

Many of the loans of concern to the Law Society arise from lawyers' business ventures with clients. With the downturn in the economy, a number of these situations have resulted in a loss for the client and claims to the Compensation Fund. Many of the investments schemes have resulted in formal disciplinary proceedings being brought against the lawyers concerned.

Borrowing from clients can give rise to many problems, some of which are as follows:

- When a lawyer borrows from a client, a debtor/creditor relationship is established

which may lead to a conflict of interest involving the lawyer;

- In many cases clients may not receive adequate security;
- In other cases lawyers do not provide adequate disclosure of their own financial situation when borrowing from clients.

The annual Form 2 report to the Law Society requires disclosure of indebtedness for borrowed money. The indebtedness may be direct or indirect to a client or to a former client who at the time of the borrowing was or had been a client of the firm of which the lawyer was then a member.

Indebtedness to persons connected by blood relationships, marriage or adoption, corporate clients whose shares are listed on the stock exchange, insurance corporations

continues...

Effective Yellow Pages ads

A recent American Bar Association study of the effectiveness of advertising in the Yellow Pages may be of interest to members who are considering how to allocate their marketing budget. Below are some of the study's main findings:

- 85% of firms with paid ads have fewer than six lawyers
- about two-thirds of firms with paid ads have only in-column (rather than display) ads
- though revenue return on advertising varies widely, 50% of firms that placed ads grossed \$3.50 for each dollar spent
- law firms that offer consumer information in their ads, such as credentials, report high levels of satisfaction
- Yellow Pages ads increase nuisance cases and the need to spend more time screening cases.

and other corporations whose business is that of lending money to members of the public are exempt from disclosure on Form 2.

A breach of Rule 7 or a failure to disclose a direct or indirect indebtedness to a client who does not fall within the exceptions may lead to disciplinary proceedings.

Members with any enquiries related to the prohibition under Rule 7 can contact the Law Society's Professional Conduct, Practice Advisory or Audit & Investigation Departments.

CPP credit splitting

Lawyers who represent clients involved in a divorce or a dissolution of a common law relationship are reminded to advise clients of provisions that allow for the splitting of Canada Pension Plan credits.

The general rule is that all unadjusted pensionable earnings of either spouse during the eligible years of cohabitation will be added together, with one-half the total being credited to the pension account of each spouse. The value of these measures to the lower income-earning spouse increases directly with the disparity in the income of the former spouses.

The conditions of eligibility and the procedures for obtaining a division of credits differ depending on the circumstances (e.g. length of relationship, when it ended, spousal agreements, time limits).

The Income Security Programs Office of Health and Welfare Canada recently began monthly mailings of credit splitting information to people who register for divorce. To ensure that divorcing individuals receive the information, it is important that lawyers provide complete and accurate addresses when filling in divorce registry forms.

Accessing driver address info

The provincial Ministry of Transportation recently began restricting access to driver and vehicle abstracts that contain individual address information. Lawyers who need to access this information for the purposes of representing a client are now required to become an "authorized" client of the ministry.

Applications to become an authorized client can be picked up at local MTO issuing or driver examination centres. They are also available by contacting the

ministry at (416) 235-4735. After an application is approved, firms or individual lawyers will be given an identification number to be used on future information requests.

Immediate or one-time requests for address information can be accommodated by completing an Address Request Application Form at an MTO issuing office.

New legislation and regulations...

Limitations

A new *Limitations Act* introduced in the Ontario legislature in November 1992 will institute consistent time periods for launching civil suits in the province.

Dozens of limitation periods for different causes of action will, in most cases, be replaced with a single limitation period of two years. The time starts to run when the plaintiff discovers, or ought to have discovered, the material facts of the claim.

The Act sets out an ultimate limitation period of 30 years, after which no claim may be brought. In certain circumstances, a special ultimate limitation period of 10 years will apply.

Specific provisions relating to civil suits launched by victims of sexual assault and domestic violence are also contained in the proposed legislation.

Copies of the bill are available from Government of Ontario bookstores. Lawyers are urged to obtain a copy and review it.

Proceeds of crime

The provisions of the *Proceeds of Crime (money laundering) Act* have recently been extended to include lawyers. The applicable Regulations were published in Part II of the Canada Gazette dated February 24, 1993.

Lawyers who, in the course of a transaction (or series of transactions, as described in the Regulations), receive cash in the amount of \$10,000 or more are now required to keep and maintain a "large cash transaction record". Members should refer to the Act and Regulations for details of record-keeping requirements.

Large cash transactions records should be kept in addition to—and separate from—the member's trust account records prescribed by Regulation 708 of R.R.O. 1990 made under the *Law Society Act*.

Personal problems? Help is a phone call away

LINK is a confidential professional counselling service for all LSUC members. Fees for initial sessions with a LINK counsellor are covered by LSUC membership; fees for additional services are the responsibility of the member. Phone 1-800-268-5211; in Toronto, 278-1491.

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