



Separation, Divorce And Wills

The *Succession Law Reform Act* contains important provisions which may seriously affect your clients who are separated or in the process of obtaining a divorce. Make sure you advise your clients that:

- a) a separation agreement does *not* revoke a bequest to a spouse in a Will;
- b) a divorce does revoke a bequest to a spouse;
- c) re-marriage revokes the *entire* Will.

Clients' Funds

Are you able to answer these questions?

Who is responsible for ensuring that clients' funds are placed in separate interest bearing accounts in your firm?

Do you follow up with the person in charge to make sure funds are properly invested?

If you have answered no to both of these questions, you may be leaving yourself open to a claim.

Clients who leave sums of money with their lawyer expect that money to earn interest.

We have had a new series of claims in which large sums of money have been left in the firm's general trust account for long periods of time.

| | | |
|----------------------|---|---------------------|
| How large? | – | 1.6 million dollars |
| How long? | – | 3-1/2 months |
| Interest lost? (10%) | – | \$46,600.00 |

As you know, interest earned in the general trust account is automatically transferred to the Law Foundation. The client gets nothing.

Protect yourself by reviewing your firm's method of handling clients' funds.

Canada Pension Plan Update

In 1978 the Canada Pension Plan was amended to provide for the sharing of pension credits accumulated by one or both spouses during the period of cohabitation. In January 1987 the Plan was further amended to significantly enlarge the class of eligible persons to include common law spouses.

Yet, many spouses discovered that, unbeknownst to them, they had contracted out of their rights to a division of C.P.P. credits. Their solicitors, in some cases, became involved in negligence claims as a result.

Problems have frequently arisen as a result of the inclusion/exclusion of general release clauses in separation agreements or minutes of settlement. Over the years, the Minister of National Health and Welfare has taken various positions as to the effect of such release clauses.

In August 1983 the Pension Appeals Board released a decision in the matter of *Minister of National Health & Welfare v. Lawrence C. Preece et al* which held that a general release clause in a separation agreement or minutes of settlement, or where a decree nisi divides property, precluded a spouse from applying for and receiving a division of C.P.P. credits.

On January 1, 1987, the legislation was amended to provide that as of June 4, 1986

spouses could not contract out of mandatory C.P.P. credit splitting unless provincial law expressly permitted the division to be waived by spousal agreement (to date, Ontario has no such law).

A number of claims were reported to the Errors and Omissions Department with respect to pre June 4, 1986 agreements or settlements when a spouse was denied a division of credits as a result of a general release clause.

This type of claim has now largely been eliminated as a result of Bill C-260, an Act to amend the Canada Pension Plan, which was proclaimed in force on March 15, 1991. Bill C-260 provides that a pre June 4, 1986 general release will no longer bar a successful application for a division of C.P.P. credits. However, where the divorce was granted prior to January 1, 1987, an application for credit splitting, even if unsuccessful, must have been brought within 36 months of the decree absolute.

Health & Welfare Canada publishes pamphlets fully detailing the ins and outs of C.P.P. credit splitting and eligibility requirements. These pamphlets may be obtained by contacting Health & Welfare Canada, Income Security Programs, Client Service Centre.