

Lawgic

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DID YOU KNOW ...

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WHAT ARE PROBATE FEES?



BY: KRISTI BURNS

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Many people have the impression that without a Last Will and Testament ("Will"), the government will take all of their "stuff", and that their family members will get nothing. In fact, there are laws in Ontario that direct how an individual's estate will be distributed if they die without a Will. The government does not take the deceased's estate unless that person has no legal heirs. However, the more common problem is that in order to have the estate distributed to the heirs, someone will need to apply for "probate" – that is, someone will have to make an application to the Court to be granted the authority to distribute the deceased's assets. This application requires paying an Estate Administration Tax, commonly known as "probate fees".

Due to changes in the law and Court procedure, "probate" is now called an Application for Certificate of Appointment of Estate Trustee With/Without a Will. The resulting Certificate indicates that the Court has certified that the Estate Trustee (sometimes referred to as the "executor") named on the Certificate has the authority to distribute the property of the deceased person. Probate fees are paid at the time of the Court Application as a percentage of the total value of the deceased's estate. Currently, these fees are \$5.00 per thousand on the first \$50,000.00 (0.5% on the 1st \$50,000) and \$15.00 per thousand for all value over \$50,000.00 (1.5% over \$50,000.00). For example, on an estate with assets totalling \$100,000.00, court fees would amount to \$1,000.00.

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On a large estate, probate fees can be substantial. When an individual dies without a Will, it is almost inevitable that someone will need to apply to the Court to obtain a Certificate of Appointment of Estate Trustee to obtain the authority to distribute the assets. As a result, the applicable probate fees will have to be paid out of the estate. What is truly unfortunate is that in many cases, the Application to the Court and some or all of the probate fees could have been avoided if the individual had made an estate plan and prepared a valid Will prior to his or her death.

With careful estate planning, probate fees can often be reduced significantly. There are various ways to avoid passing assets through an individual's estate, thereby diminishing the value of the estate for

probate purposes. Assets which are held jointly with a right of survivorship (such as bank accounts or investments), or those which have named beneficiaries (such as insurance policies, RRSPs or pensions) are two examples of assets which might not fall into the deceased's estate for the purposes of calculating probate fees.

Wise estate planning obviously involves preparing a Last Will and Testament containing an Estate Trustee whose authority does not necessarily need to be validated by the Court. Sometimes, a lawyer will recommend that an individual have multiple Wills that work together to reduce the amount of probate fees paid by the estate on death. Speak with a lawyer regarding your circumstances to establish an estate plan that works for you.

WHEN IS A LOAN REALLY A GIFT?



BY: TRACEY NIECKARZ

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BY: KATHLEEN COMMISSO

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You recently learned that your spouse is an Ashley Madison client! Your spouse is not the only one. He or she is in the same boat as an estimated 7074 other people in Thunder Bay and approximately 25% of the population of Greenstone. Unfortunately for you, the Ashley Madison data hack didn't happen until 5 years after your wedding and after you had already invested \$50,000 (borrowed from your parents) into your jointly owned matrimonial home. Your parents were generous enough to loan you and your spouse the money when you purchased your first home shortly after getting married. No formal loan documents were signed. Your parents simply trusted you and your spouse to pay the money back when you were in a better financial position.

After coming to terms with the fact that you're probably better off without your philandering spouse, you go to meet with a lawyer. Naively you believe that your separation will be very simple; you

earn around the same income as your spouse, you don't have any kids and no real assets other than a fair amount of equity in the house. You figure that you will simply sell the house, pay off the mortgage and your parents and split whatever is left over. Unfortunately, the loan from your parents significantly complicates issues as you soon learn.

When you meet with your lawyer you're surprised to learn that even though your parents expressly told you and your spouse that the money was a loan, a court might think otherwise.

The Court might consider the loan an outright gift and not expect your spouse to pay any part of it back or, it may reduce the value of the loan to take into account the likelihood of the loan never being repaid.

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This means that:

- your parents won't get paid;
- they will only be paid a portion of their loan; or
- you will be stuck paying them back the whole amount.

If your parents acknowledge that they never expected you to repay the loan, then they have given a parting gift of \$25,000 (half of the \$50,000) to their ex-son/daughter-in-law.

How is this fair? Well, it's not. But the law is partially designed to create some certainty in family law. The goal is to avoid situations in which parents gift money to their child (and their child's spouse) and later attempt to claim that the money was a loan when their child's marriage dissolves. In a recent decision of the Ontario Superior Court of Justice, *AA v ZG*, 2015 ONSC 4397, the Court stated that "fairness dictates that the [spouse] should not receive a credit for a debt that he never intended to repay and that will never be repaid".

So how can you ensure that you do not have this problem? Take these few simple steps to make sure that a loan is not considered a gift:

1. You (and your spouse) should sign a loan document with specific terms including how the loan will be repaid;
2. If the loan is significant your parents should consider taking security on the loan;
3. Your spouse should receive independent legal advice before signing the loan and security document;
4. You should make sure that bank records are maintained showing the repayment of the loan; and
5. You should get a domestic contract prepared that acknowledges that the money is a loan repayable to your parents and not part of your jointly owned property.

These steps may help to avoid any unexpected surprises upon separation. When your family members become financially involved in your marriage they should make sure that their investment in your future is protected.

REMINDER: NEW ROAD RULES AND PENALTIES EFFECTIVE SEPTEMBER 1, 2015



BY: LORI KRUSE

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OFFENCE	CURRENT FINES	NEW FINES
Distracted Driving	\$60 - \$500	*\$490 and three demerit points
"Dooring" of cyclists or vehicles	\$60 - \$500	*\$365 fine and three demerit points
Passing cyclists	NONE	*\$110 fine and two demerit points for failing to leave a one-meter distance when passing cyclists Note: in a community safety zone, the fine is *\$180 fine and two demerit points
Improper lighting on bicycle	\$20 set fine	*\$110 fine
Slow Down, Move Over (for emergency vehicles stopped at roadside)	No fine, however, motorists are expected to slow down and move over in these situations	*\$490 fine Note: this requirement applies for tow trucks stopped at roadside.

* Fines as listed is the set fine including Victim Fine Surcharge and court costs

SO YOU THINK YOU CAN BE A LANDLORD?



BY: MIKE MAHER
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“What a great investment property! We’ll find some tenants, pay off the mortgage, it will pay for itself!” Famous last words. Renting property in Ontario can be rewarding, but landlords often find themselves relying on a combination of the internet, coffee shop talk, and advice from friends or relatives, which may not be entirely accurate or up to date.

Here are 10 things to keep in mind:

1 FIND THE RIGHT TENANT

It is important to interview and have a robust rental application process. Landlords have obligations under the *Human Rights Code*, RSO 1990, c H.19 (“Code”) even at the application stage. It is important that you understand your obligations under the Code. Your actions (and/or the actions of your agents or employees) could lead to problems down the road if you do not have an appropriate application process for selecting the right tenant for you.

2 HAVE A TENANCY AGREEMENT IN PLACE

While handshake deals and unwritten tenancy agreements are legal they are not recommended. You may end up with terms you and your tenant never even thought of being implied or read-in by a Judge or Tribunal Member. Good tenancy agreements are worth their weight in gold. If you do not have a written agreement, you must still give your tenant a written notice with the landlord’s legal name and address for service of notices or other documents. (*Residential Tenancies Act*, 2006, SO 2006, c.17, s 12 “RTA”)

3 KEEP GOOD RECORDS

Stay organized and maintain a good record of the tenancy. Whether you need to prove expenses to the Canada Revenue Agency,

prove that a tenant has consistently paid his rent late, or need to keep track of important notice periods, the benefit of having an up-to-date record-keeping system can never be overstated. Furthermore, when you eventually sell the income property, solid records will be attractive for prospective buyers.

4 REMEMBER ANNIVERSARIES

Your spouse isn’t the only one that needs remembering! Keep track of the date your tenants moved into the property as that anniversary date is when you may raise the rent (RTA, section 119) and when you must annually account for interest on rental deposits (RTA, section 106(6)).

5 RAISE THE RENT

The Landlord and Tenant Board annually issues the rent increase guidelines which define exactly how much Landlords may raise rent. The guideline number is tied to the Consumer Price Index; the rate for 2015 rent increases was 1.6%. Keep up with these increases. You can only raise the rent once per year (RTA, section 119), you must give your tenant 90 days notice of the increase (RTA, section 116), and you can’t ‘double up’ in years following a year that you chose not to increase the rent.

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6 RENTAL DEPOSITS

Landlords and tenants often forget the part of the RTA which requires Landlords to account for (and pay) interest on the amounts they have on deposit. Typically, tenants will pay last month's rent as a deposit. Every year interest needs to be paid on that deposit in accordance with that year's rent increase guideline; likewise, tenants may be asked to top-up the deposit to be in line with the current rent (RTA, section 106(3)).

7 ENFORCING YOUR AGREEMENT

Landlords often take leases from the internet or self-help books. Often these leases are not carefully reviewed, revised or considered by the landlord, never mind the tenant. Make sure that you're sticking to the Agreement or you may be prevented from enforcing those terms later.

8 KICKING 'EM OUT

In Ontario, security of tenure is guaranteed (RTA, section 37). In other words, once a tenant is on a 'month-to-month' lease agreement, there are only a few ways that a landlord can unilaterally evict a tenant. This highlights the importance of making sure that you have excellent tenants from day one.

9 CHECK ON YOUR PROPERTY

Consider keeping regularly scheduled maintenance visits with your tenants. These check-ups should be documented (i.e. in a checklist) and signed and dated by the inspector and tenants. This gives landlords the opportunity to inspect the property and gives tenants the opportunity to bring anything up. It doubles as an excellent defence for the landlord to any later claims for outstanding maintenance or building issues.

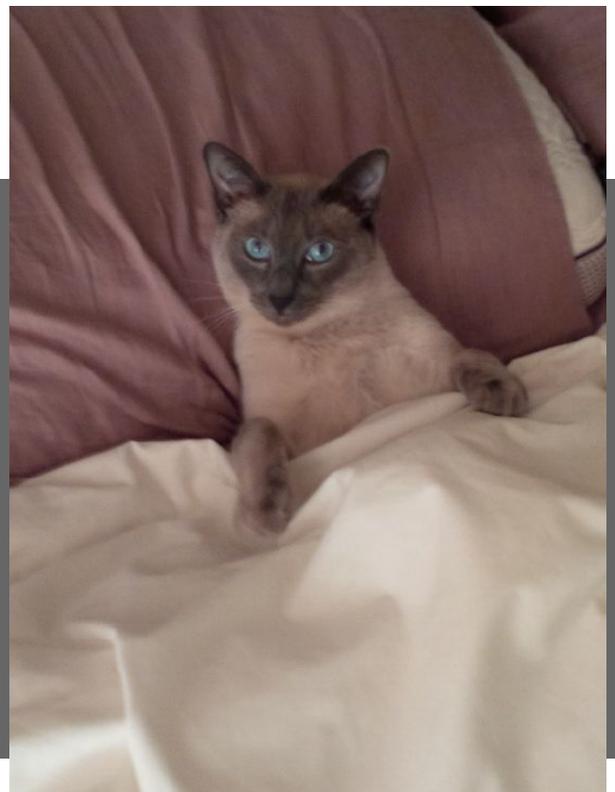
10 KNOW YOUR LIMITS

When landlords or tenants have a dispute, they must apply to the Landlord and Tenant Board for resolution to their dispute. Eventually their case is argued before a Tribunal Member. In many situations, landlords have one shot to get it right: from application to argument. Tenants and their lawyers will look for any way to defeat the claim, even if it means scrutinizing the landlord's initial application. Know when to call in the professionals.

RELAX

**WE'VE GOT ALL YOUR LEGAL
NEEDS COVERED!**

Photo submission by Paul Ratcliffe



TRIAL BY HOT IRON



BY: DOUGLAS TREILHARD

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Most twenty-first century Canadians take it for granted that, in the event of a sufficiently serious and irreconcilable dispute with another, one can resort to the impartial judges and juries of our court system to adjudicate the dispute according to law.

But this state of affairs has not always existed. It is the product of long historical development, in which various alternative means of resolving disputes were tried.

Of course, the default position in primitive societies is that might makes right. If you believed you had been wronged, your only recourse was to your own (or your clan's) capacity to forcibly extract compensation of some sort from the wrongdoer.

To avoid the ceaseless feuding that resulted, our ancestors' first recourse was not the law as we know it, but supernatural tests designed to reveal divine will. One can understand how a party to a dispute might be prepared to accept God's adjudication, while rejecting a fellow man's.

The following were among the supernatural tests used:

- The ordeal of hot iron, in which a party's hand was burned with hot iron, bandaged, and then inspected a few days later. If the burn had become infected, then God was understood to have ruled against the party.
- The ordeal of cold water, in which a party was tied up and dropped into a pond. If he sank, then God was understood to have ruled in his favour and he was rescued.
- The oath, in which the party and a number of his neighbours swore to the truth of his case on the holy evangels. Once the requisite number of oaths had been sworn, the party's case was automatically accepted as true and

there was no further investigation of the facts.

- Trial by battle, in which the parties (or their champions) met in physical combat, with God being trusted to give victory to the deserving party.

The Church prohibited further trials by ordeal in 1215. The oath and trial by battle were only formally abolished in 1833 and 1818, respectively (although they had fallen out of use centuries before that).

Once it was accepted that supernatural tests were an unsatisfactory way of deciding cases, lawyers, judges and juries were left to use reason to determine the outcome of particular disputes and the rules by which cases should be judged. This was the beginning of the law as we know it today.

That isn't to say that the temptation to resort to supernatural tests has entirely vanished. In 1994, an English man's murder conviction was overturned when it was discovered that the jurors had consulted a Ouija board to determine whether he was guilty. And in 2015, a New York lawyer, inspired by "Game of Thrones", requested trial by combat in a civil case.

FAREWELL TO RODI-LYNN RUSNICK-KINISKY

In September of 2015, Buset & Partners LLP bid farewell to Associate Lawyer Rodi-Lynn Rusnick-Kinisky. Rodi-Lynn has taken on the position of Senior Review Counsel for the Lakehead Legal Services Clinic at the Bora Laskin Faculty of Law, Lakehead University.

A heartfelt thanks to Rodi-Lynn for her contributions over the past 8 years. We wish her continued success in her new role!



UNDER OATH: PAUL F. RATCLIFFE, B.A (HONS.), J.D.

Where did you grow up?

The Big Smoke (Toronto).

Why aren't you there now?

I did my undergrad at Queens University, in Kingston. After graduating, I moved to Australia to do my law degree at the University of Queensland, in Brisbane. After articling and practicing for one year in Australia, it was time to return home. However, the downside to the return home was that I was in the longest (literally) distance relationship ever. Once I was finally able to convince my aussie girlfriend, Karen, to move to Canada (not an easy feat, by the way), it was time to start my career in Canada. We knew we wanted to live in a smaller community outside of Toronto so when a friend turned me on to Thunder Bay, I lined up a few interviews and managed to land a job at Buset and Partners (September, 2011).

I will always remember my first drive up to Thunder Bay when we moved here. Just after Sault Ste. Marie (along the north shore), I was blown away by the landscape. It reminded me of the sea to sky highway (from Vancouver up to Whistler). That is when I truly recognized the beauty the North had to offer and couldn't wait to explore it further.

Four years later, Karen is now my wife and we just became the proud parents of a beautiful baby girl, Lily. We have also bought a charming (and surprisingly affordable) character home in Port Arthur.

What is your area of practice and why did you choose that?

The bulk of my practice has been in civil litigation: handling tort claims, property damage and product liability cases as well as contract disputes. My focus is now a corporate commercial practice where I help businesses, organizations and corporations with their everyday legal needs (drafting contracts, providing opinions, construction liens etc).

How long have you been a lawyer?

In Australia, I became a lawyer in 2008. After returning to Canada, I was called in 2011

What do like most about being a lawyer?

I like being able to help people. Clients often come to me not knowing what to do about a specific problem they are facing. I enjoy being able to explain their options to them and hopefully achieve the result they are looking for.

What are you passionate about personally? What can't you stop talking about?

I can't stop talking about Lily at the moment. She has been such an amazing addition to our family! I am also the proud dad that is always happy to share photos so please just ask. I also enjoy playing sports such as hockey and ultimate Frisbee. These are a great opportunity to catch up with friends.

What's your favorite way to spend a weekend?

A typical Saturday now for us is relaxing in bed and playing with Lily, maybe going for a family walk to the Marina, running a few errands, catching up with friends, that sort of thing.. I do try to stay away from the office (if possible) as Saturdays are my family time.

What would be impossible for you to give up?

My family: they are my whole world.

What surprises people the most about you?

I'm funny! I'm told that at first approach, I seem friendly and kind but my humour is what tends to sneak up on them.

What is one little known fact about yourself?

Well I managed to snap my achilles tendon on three different occasions (different ankles) before the age of 30.



... NOW YOU KNOW!