

# The Lawrence Letter

L E G A L B U L L E T I N

July 2005

## Make A Will

Mr. Procrastinator was a good family man and a good provider with a wife of twenty years and two children aged 19 and 14. Unfortunately, he died unexpectedly last week and he died without a Will. It was something he always was going to look into. But, living up to his family name and as it involved spending some money for a lawyer, he just never quite managed. His family now regrets that he didn't.

At the time of his death, Mr. Procrastinator was a co-owner of the family residence with his wife so that the home was passed to her by right of survivorship. Mr. Procrastinator also had \$500,000 in his own name and his wife was expecting to receive these assets as well, so she could maintain

her lifestyle. However, without a Will, this won't happen.

If Mr. and Mrs. Procrastinator were legally married, his wife would be entitled to a preferential share of \$200,000 and would also receive a further one-third of the remaining amount, being one-third of \$300,000. The remaining value in the estate would be divided equally between the children. Since one child is already an adult, being 19, that child will receive her share of \$100,000 to do with as she sees fit. The other child, being a minor (under eighteen years of age), would see his interest paid into court. He would gain access to his share when he attained eighteen years of age, some four years later.

If Mr. and Mrs. Procrastinator were not legally married but were living common law, she would not be entitled to any part of the \$500,000 that was in her spouse's name. The children would equally share the \$500,000 between them, in the same way as set out above. Their mother, if she felt that adequate arrangements were not made for her, would be forced to initiate a lawsuit against the estate.

Many of these issues and problems will cost money to solve, most likely much more than the cost of a Will, and will only eat into what Mr. Procrastinator left behind. With a Will, they could have been avoided.

---

## Employment Law Update

When an employer is unable to keep an employee, the employer will often offer the employee a severance package upon termination of their job. A variety of different factors and issues are taken into account for the purpose of determining what is a fair and reasonable package.

In Ontario, the *Employment Standards Act* sets out mandatory minimum severance payments. However, in some

cases, employees are unable to carry out their job because of illness or injury. The question then is whether an employer is obligated to make severance payments to such an employment upon termination.

In a recent Ontario Court of Appeal decision, the Court declared the section of the *Act* that permitted employers to avoid severance payments to such terminated employees as

being unconstitutional and of no force and effect. In other words, employees that are terminated because they cannot carry out their job because of illness or injury are entitled to receive the mandatory minimum severance payment just like any other employee. One of the reasons for this is that severance is to recognize and reward past service and is not only to assist terminated employees in finding new work.

---

# Barbeque Blues

It's summertime and what's better than having friends over for a barbeque? You're going to have hot dogs, hamburgers and lots of beer and wine. As always, one of the guests appears to have a bit too much to drink but insists that he is okay to drive. After leaving the barbeque, he gets into a serious car accident. Not only does he sue you for his injuries but so does the person he ran into. Reality or just a bad nightmare?

The liability of bars or other licensed establishments in such a scenario is now well established in Ontario. The liability of employers where the employer

has supplied the alcohol or condoned the employee becoming intoxicated, while not at quite the same level of liability as licensed establishments, is a possibility. With respect to social hosts, the law is unclear.

In a recent Ontario Court of Appeal decision, the Court, in absolving a social host, held that social host liability was a novel claim in Canada. The Court also held that the host was not under any duty to monitor his guest's drinking. However, this was a "BYOB" party and it was unclear whether the host knew his guest would be driving. The Court went on to say that its ruling did not

mean that social hosts might not be found responsible in the future if they knew that their guest was intoxicated and did not take reasonable steps to prevent him from driving.

The Supreme Court of Canada has decided to hear an appeal from this decision and hopefully will give some guidance on this issue. One thing that is certain is that plaintiffs will continue to make this claim, Courts will have to wrestle with the problem and it is only a matter of time before a social host is found liable.

---

*This newsletter is provided as an information service. The comments and information are not meant as legal opinions and readers are cautioned not to act on information provided without seeking specific legal advice.*

## Firm News

**Michael Luchenski** – Michael is the President elect of the Brampton Board of Trade. His term as President will begin on July 1, 2005. Michael recently attended the Ontario Chamber of Commerce annual general meeting and policy forum in Sarnia as a voting delegate for the Brampton Board of Trade.

**Robert van Kessel** – In 2001, Rob co-authored a text on enforcing judgments and orders. In 2002, Rob published a well received second textbook on summary judgments and is currently writing a book on receiverships.

**Anthony Bak** – Anthony has an extensive background in all matters relating to motor vehicle sales and related issues and has participated in a number of leading

decisions dealing with licensing of car dealerships.

**Michael Prsa** – Michael has remained active as a member of the executive of the Ontario Bar Association Estates and Trusts Section and has recently participated in a five week estate planning program on AM740.

**Shuchanna Swaby** – We are delighted to welcome Shuchanna to our family law group. Shuchanna was called to the bar in 1998 and was in private practice as well as with The Family Law Office in Toronto prior to joining Lawrences.

**Christine Wiseman** – Christine is currently completing her articles with Lawrences and we are happy to report that she will be joining us

as a lawyer in the civil litigation group after she is called to the Bar later this summer.

**Ken Hood** – Ken is an experienced litigator and is certified by the Law Society as a specialist in civil litigation. He is one of four such specialists in Brampton. Ken practised in downtown Toronto for over twenty years before joining Lawrences in 2004.

**Ed Upenieks** – Ed is the founding Chair of the William Osler Health Centre Foundation (Brampton, Etobicoke, Georgetown) and was recently appointed Chair of the Board of Directors of the Trillium Foundation for Halton-Peel.

---

*Lawrences provides a full range of business and personal legal services. The Lawrence Letter is published periodically to highlight recent developments in the law and to raise awareness of matters that may be of interest to our clients. If you would like more information about any of the above topics or about Lawrences, please contact us.*

**LAWRENCE · LAWRENCE · STEVENSON · LLP**

43 Queen Street West  
Brampton, Ontario, L6Y 1L9

Tel.: (905) 451-3040  
Fax: (905) 451-5058

Website: [www.lawrences.com](http://www.lawrences.com)