

McLEAN & KERR LLP BULLETIN

MULTIPLE WILLS AND ESTATE PLANNING

There has been a recent development in Ontario in the area of estate planning and minimizing estate administration tax.

Background of Estate Administration Tax

In order to administer an estate and transfer certain assets from the deceased person to the proper beneficiary, it is often necessary to apply to the Ontario Superior Court of Justice and obtain a Certificate of Appointment of Estate Trustee (formerly called "Letters Probate" or "Letter of Administration").

The Province of Ontario levies an estate administration tax ("Estate Tax") at the time application materials are submitted to the Court.

Estate Tax can be significant and is calculated upon the value of practically all of the deceased's assets at death. The rate of Estate Tax is currently \$5 for each \$1,000 of the first \$50,000 of the value of the estate, and \$15 for each \$1,000 of the value of the estate in excess of \$50,000.

In order to reduce the amount of Estate Tax that would be levied against a deceased's estate, the "multiple wills" estate planning technique can be utilized. This estate planning technique consists of preparing a "primary" will for property on which Estate Tax must be levied and a "secondary" will for property that can be transferred without a Certificate of Appointment of Estate Trustee.

Granovsky v. Ontario

The effectiveness of this method of estate planning in Ontario was put to the test in the *Granovsky v. Ontario* (1998), 156 DLR (4th) 557 (Ont. Gen. Div.) decision. Philip Granovsky died leaving two wills which were executed on the same date - a "primary" will for a \$3.2 million estate consisting mostly of real estate, and a "secondary" will for a \$25 million estate consisting of shares of a closely-held, private corporation. Since a Certificate of Appointment of Estate Trustee was not required to deal with the private corporation shares, the "secondary" will was not submitted to the court and no Estate Tax was paid on their value (although full disclosure concerning the "secondary" will was made at the time of filing the "primary" will).

The Court determined that the use of multiple wills in Ontario constitutes a valid method of estate planning and represents "another example of how a careful testator plans to have his or her estate pay the least possible [Estate Tax] on death."

Government Reaction to *Granovsky*

The Province of Ontario initially indicated that it would appeal the *Granovsky* decision, however, it has since abandoned its appeal. The taxing legislation has not been amended. Accordingly, the multiple wills strategy for assets located in Ontario can now be utilized as an Estate Tax planning strategy even for risk averse clients..

Application and Practicality of Multiple Wills

Going to the trouble of preparing multiple wills will only be cost effective for individuals with significant assets that can be transferred without a Certificate of Appointment of Estate Trustee. The multiple wills technique will have principal application for shares in privately held corporations. Directors of a private corporation can choose to dispense with the requirement of obtaining a Certificate of Appointment of Estate Trustee to transfer shares to beneficiaries.

McLean & Kerr LLP's Estate Administration Practice

Should you be interested in discussing the application of multiple wills, have any questions or simply wish to update your estate plan, please call us to arrange a meeting.

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Scott A. Campbell 416 369 6615

WE'RE GROWING

We are pleased to announce that McLean & Kerr LLP is expanding to better serve its clients. We have taken on additional premises at 130 Adelaide Street West, Toronto and we are pleased to welcome 4 new lawyers to the firm and introduce them to you:

	<u>Area of Practice</u>	<u>Telephone</u>
Nadim Wakeam	Corporate and Commercial / Securities	416 369 6612
Julian Binavince	Litigation	416 369 6609
Scott A. Campbell	Commercial Real Estate & Leasing / Corporate & Commercial	416 369 6615
Koby Smutylo	Corporate and Commercial / Securities	416 369 6610

We are very excited about the firm's expanded securities practice group and will provide another update soon. In the meantime we look forward to continuing to provide you with the high level of service and expertise that our clients have come to expect from McLean & Kerr LLP.