

THE PROBATER

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HULL & HULL LLP
Barristers and Solicitors

The Future Is Here – Now's the Time for Electronic Resources in Your Will Planning Practice

By Ian M. Hull

In an effort to ensure that drafting solicitors stay on top of the relevant electronic programs available to them, I have considered several recent internet-based resources for your wills practice.

In the estate litigation context, drafting solicitors are on occasion sued for professional negligence where it is believed that the testator either lacked the requisite testamentary capacity to execute a will and/or was unduly influenced in the course of the drafting, preparation and/or execution of a testamentary document.

Due to our aging population, it seems that a greater number of testamentary documents and the circumstances surrounding their execution, are, and will continue to be, put under the microscope. Great care must be taken in situations where a solicitor reasonably concludes that a client has diminished capacity and yet still wishes to prepare a will or do some estate planning for him or her. If solicitors are unaware of the red flags and the specific questions they should be asking their clients, there is a much greater likelihood that litigation will result.

Many of the claims we see arise out of the lack of proper checks or checklists in the preparation and execution of a trust deed, Will or power of attorney and with the subsequent administration of the trust or assets.

NOTICECONNECT AND ONLINE ADVERTISING FOR CREDITORS (NoticeConnect.com)

NoticeConnect is an online notice to creditors service for estate administrations.

One of an estate trustee's duties in administering an estate is to satisfy any outstanding debts owed by the deceased person upon his or her death. An executor who is aware of an outstanding claim by a creditor, but nevertheless distributes the estate, may be personally liable to the creditor. Although there is no requirement in Ontario to advertise for creditors, it is generally advisable to do so in order to enjoy the protection afforded to estate trustees by s. 53 of the *Trustee Act*, R.S.O. 1990, c. T.23.

Section 53 provides that upon the expiration of due notice to creditors, the estate trustee may proceed to distribute the estate assets, and will not be held personally liable should there be later notice of a claim following such distribution. The notice does not extinguish the debt, but removes the personal liability of the estate trustee.

The *Trustee Act* does not specify the manner in which notice should be made, nor the length of time that should pass before the notice expires. One commonly accepted method is to advertise in the local newspaper in the location where the deceased lived, usually for 3 consecutive weeks, after which the estate trustee will generally wait at least 30 days before taking steps to distribute the estate. Another option has been to advertise in the Ontario Gazette, which publishes, amongst other things, legislative decisions and public notices.

However, the Ontario Gazette recently advised that, as of January 1, 2017, it will no longer be accepting requests to publish private notices where there is no statutory requirement to publish in the Ontario Gazette.

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Based on the convenience and cost-efficiency of online advertising, we may be able to avoid a significant disturbance in the process of administering estates due to the fact that the Ontario Gazette will no longer publish private notices. Change can be a good thing and if we can adapt accordingly, we may be able to establish a new and more efficient customary way of advertising for creditors.

COURT CALL (<https://courtcall.com>)

In Toronto, on an experimental basis, the courts have instituted a comprehensive video conferencing service.

This pilot project is applicable only to 9:30am scheduling appointments on the Toronto Estates List and it was made in accordance with Rule 1.08 of the *Rules of Civil Procedure*. The new practice advisory is clear that, unless otherwise directed by the court, video conferencing is available in consent matters, unopposed matters, and scheduling matters. Parties or counsel who choose to appear by video conference must make their own arrangements and they may use CourtCall without prior court approval. An appearance by CourtCall should be communicated to the court in either the request or confirmation form filed for the appearance. As a matter of convenience, the Order, once issued and entered, will be sent to you by CourtCall.

CAMBRIDGE BRAIN SCIENCES – ONLINE CAPACITY TESTING (www.cambridgebrainsciences.com)

Cambridge Brain Sciences is an online cognitive assessment that can provide lawyers with an opportunity to protect their clients and ensure that proper capacity assessments are undertaken. Equally importantly, these assessments can be entirely supported and verified by the science behind them.

The Cambridge Brain Sciences online test is backed up by more than 300 peer reviewed studies over the past 25 years and accurately measures the core elements of cognition including memory, reasoning, planning, and concentration.

Dr. Adrian Owen is the Founder and Chief of Scientific Officer for Cambridge Brain Sciences and is the

Canada Excellence Research Chair in Cognitive Neuroscience and Imaging at The Brain and Mind Institute, Western University, Canada (<http://www.owenlab.uwo.ca>).

We, of course, in our daily practice deal with mental capacity issues amongst aging clients and this is an emergent concern. Determining capacity can be a difficult and costly process and this online test is an excellent resource for lawyers to consider.

HULL E-STATE PLANNER (www.e-stateplanner.com)

Finally, I am proud to announce that I have created Hull e-State Planner, a software program that will, in my view, greatly assist you in your will planning practice.

Hull e-State Planner streamlines the information intake process, assists in visualizing the estate plan and provides comprehensive checklists to help prevent missing important planning issues.

I include a copy of my brochure and I invite you to contact me or learn more about this product at www.e-stateplanner.com.



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