



HULL & HULL LLP
Barristers and Solicitors

Private Care Agreements and Estate Planning

In 2017, the value of detached homes in the City of Toronto and surrounding areas have reached an all-time high. The result is that many aging Canadians own an asset of significant value. However, studies suggest that Canadians are saving insufficient funds to cover their costs of living as they retire and, particularly, caregiving costs as their health may decline over time.

One option for seniors who wish to continue living in their home and cannot afford to retain ownership of the property while paying for in-home caregiving is to enter into a private care arrangement with family, friends, or neighbours. A private care agreement is an arrangement by which one party agrees to provide care for another person, usually a family member or older friend, in exchange for compensation. Compensation may be in the form of an immediate or conditional *inter vivos* gift or a transfer of property or other valuable assets pursuant to the terms of a will. The *Succession Law Reform Act* and Canadian case law have respected the right of a deceased person to enter into a private care agreement.

A structured private care arrangement can be beneficial to both parties. However, one that is poorly established can threaten the wellbeing or financial security of either party. Drafting solicitors may wish to advise clients of the following when advising them with respect to private care agreements or a related estate plan:

- That a private care agreement should be made in writing, with legal assistance, and with all parties to the private care agreement obtaining independent legal advice;
- That the contract may be enforceable by either party;
- That the private care agreement may restrict the operation of a will to the extent that a testator makes gifts that are inconsistent with the terms of the agreement;

- That it is impossible to predict how long an elderly person will live or the nature of care that will be required by him or her at a later stage – for this reason and others, it is important that the possibility of an early termination of the arrangement is contemplated within the written agreement and any corresponding provisions of a testamentary document;
- That other survivors may object to the preferential treatment of the caregiving party under a will, giving rise to the increased likelihood of a will challenge; and
- Other options may be available and accessible in terms of obtaining funding for paid caregiving services without the sale of a property.