

Wills, Trusts & Estates**Avoiding mistakes: How technology can help wills and estates practitioners**By **Gregory Sidlofsky and Peter Askew**

Gregory Sidlofsky

(May 15, 2020, 8:43 AM EDT) -- According to Ontario's professional liability insurance provider, LawPRO, claims against wills and estates practitioners in Ontario have been on an upswing in the last decade, nearly doubling in frequency. As litigators who often prosecute claims against lawyers accused of negligence, we have observed first hand the types of mistakes that are often made. These mistakes generally stem from a failure to stay informed about the relevant law and/or to adopt and follow best practices when carrying out their duties.

Increasingly, we anticipate that best practices will include utilization of technical innovations. In this article, we explore some of the ways in which such innovations may assist lawyers in avoiding malpractice errors and thereby reduce negligence claims. Here are some common malpractice errors from the LawPRO *Wills and Estates Claims Fact Sheet*, 2008-18.

Inadequate investigation and lack of communication

On average, 61 per cent of claims against wills and estates lawyers are related to inadequate investigation and lack of communication. Common malpractice errors include:

- Failure to ask sufficient questions to determine the testator's assets;
- Failure to ask about the existence of a prior will;
- Not digging into more detail about the status of past marital relationships, children or stepchildren, or whether a spouse is a married spouse or common law spouse;
- Failure to compare the draft will with the instructions or notes to ensure consistency; and
- Failing to ensure that the client understands what the lawyer is telling them and vice versa, particularly if there is a language barrier.



Peter Askew

Errors of law

Fifteen per cent of malpractice claims against wills and estates practitioners arise from errors of law. Common errors include:

- Not being aware of key provisions of the *Income Tax Act, R.S.C. 1985, c. 1* (and not obtaining the appropriate tax advice); and
- Drafting complex wills involving sophisticated estate planning without the necessary expertise.

Clerical and delegation errors

Clerical and delegation errors make up eight per cent of claims against wills and estates practitioners.

Can technology help address common malpractice errors?

In our view, technology products can assist lawyers in avoiding many of the common errors outlined above. As a case study, we examined eState Planner, a recently launched technology platform that helps lawyers and financial advisers deliver estate planning services for their clients. This platform was created by Jordan Atin of Hull & Hull LLP, who worked with Ian Hull to scale it up.

How eState Planner works

The eState Planner platform allows practitioners to collect key client information using a digital questionnaire that is completed by the client online. The portal allows practitioners to monitor the client's progress as they complete the questionnaire and follow up on items that require attention. Once completed, the information is available on the portal in an easy-to-read format. Information about the client's family is converted into a family tree and a list of assets is provided and marked with the date of completion.

To create the estate plan, practitioners can implement instructions from clients in real time by dragging and dropping assets to create bequests. The client is able to see the implications of their decisions, such as tax payable or how a given bequest affects what assets are available for distribution to other beneficiaries. "Adviser alerts" provide prompts with respect to various issues, such as a non-resident attorney or a missing gift-over provision. This part of the process can be conducted over videoconference or in person. The consultation can also be recorded using videoconferencing software.

The final part of the process is to generate the documents required by the client, such as wills or powers of attorney. This is done automatically by the software. The software can also generate easy to understand graphic and text summaries of the client's will.

This is the first of a two-part series.

Gregory Sidlofsky is an experienced litigation lawyer certified by the Law Society of Ontario as a specialist in civil litigation and a partner with Wagner Sidlofsky LLP. Peter Askew is a member of Wagner Sidlofsky LLP's estate and commercial litigation groups.

Photo credit / Sergei Chuyko ISTOCKPHOTO.COM

Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Richard Skinulis at Richard.Skinulis@lexisnexis.ca or call 437- 828-6772.

© 2020, The Lawyer's Daily. All rights reserved.