



Lancaster, Brooks & Welch LLP
BARRISTERS AND SOLICITORS

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Multiple Wills
by Michael Mann

Do you own shares in a privately held Canadian company?
Would you like your estate to be exempt from the payment of certain taxes at the time of your death?

Certificate of Appointment

Formerly referred to as "probate", an executor may be required to apply for a Certificate of Appointment to administer your estate. The decision as to whether your Will is subject to this process is in the hands of those who hold your assets. For example, if you own shares of a company which is traded on the TSE, then the executor named in your Will may have to apply for a Certificate of Appointment before the shares may be transferred to the beneficiaries named in your Will.

In most cases, the process of applying for a Certificate of Appointment is rather simple. A judge reviews the application to confirm that the Will was validly made and that the executor applying for the Certificate has the authority to deal with the assets of the estate.

"Probate Fees"

When an application is required, a filing fee is charged in Ontario based upon the value of the assets that will be distributed through your Will. The tax is \$5 for each \$1,000 for the first \$50,000 value of the estate plus \$15 for each \$1,000 for the value of the estate in excess of \$50,000. [Example: if the value of your estate assets is \$250,000 then the filing fee that your estate would be required to pay is \$3,250].

Exemption from Administration Fees

In Ontario, the law allows for the preparation of multiple Wills which permits you to deal with assets that are not subject to "probate" in a secondary Will. Your primary Will would continue to deal with the administration of and distribution of your bank accounts, your house, your RRSPs, etc., the aggregate value of which would be subject to the administration tax; but if you own shares in a privately held Canadian company, the transfer of these shares at the time of your death may be exempt from such probate tax. Let's assume, for instance, that you and your spouse are the only shareholders of a family-owned business and when you die, you want to leave your interest in the company to your spouse. Unlike a public corporation, your private company is not going to require validation of the Will before the shares can be transferred to your spouse so the disposition of these shares by your estate can be dealt with in a secondary Will.

Other Assets

Some estate planning professionals have gone further than including just shares in privately held companies. For instance, certain personal effects such as vehicles, antiques and collections have been included in secondary (i.e. non-probated) Wills; but the courts and the government are currently monitoring this process very closely. Where multiple Wills have been made, each of the Wills has to be presented to the judge during the Certificate of Appointment process, even though currently the filing fee is only paid on the primary Will assets.

If your corporation is financially successful, the impact of not having to pay probate fees could be significant. Therefore, we strongly encourage you to deal with a professional advisor to consider your particular circumstances and to determine whether the options set out in this article are suitable for you.

The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.

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