



WILLS

Matter

THE LAZY EXECUTOR – WHAT CAN BE DONE?

In our last edition of *Wills Matter*, we described some of the typical duties of an executor/executrix of a Will. In this edition, we address some of the legal ramifications for an executor who does not perform these duties satisfactorily.

In general, there are two things that you can do when an executor is acting improperly:

- 1) apply to the courts to 'prod' the executor into action; or
- 2) apply to the courts to remove the executor and substitute someone else.

For example, in cases where the executor delays excessively in applying for probate or administering the estate and distributing the assets, then an 'interested person' can issue a 'citation' to the executor to compel him or her to either file for probate within 14 days, or step down as executor, in which case someone else will be appointed.

There may also be times when an executor's behaviour amounts to misconduct, and the courts may remove the executor. For example, it may be misconduct where an executor:

- attempts to benefit financially from his or her position as executor;
- does some act or omits to do something that endangers the estate property or the best interests of the beneficiaries;
- is convicted of a felony, or
- has personal interests that conflict with the best interests of the estate.

On the other hand, mere differences of opinion or even hostility between the executor and beneficiaries will not necessarily be sufficient grounds for removal. If the executor is acting fairly and in the best interests of the estate, then, essentially, everyone just has to learn to get along!

If you are concerned that an executor of a Will is not acting properly, you should seek the advice of an experienced Estates Lawyer. Your lawyer will determine whether you are an 'interested person' and have the right to get involved, and will provide you with assistance in making the necessary court applications.*

Contact Fulton & Company's Wills & Estates Team

if you have any questions regarding wills or estate matters.

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