

# TickerTalk

February 2008

## Mediation, not litigation

More and more, the legal profession is seeing claims made against estates, and cases filed with the courts to challenge the validity of a will. Common reasons for claims against estates include unequal treatment of beneficiaries, poor drafting, improper estate planning advice, or the estate planning not being kept up-to-date.

Not only does this have a negative impact on the individuals involved, tearing apart families when they need each other most, it often takes years to settle. And, when all is said and done, the legal fees can end up larger than the estate itself.

That's why one area recently added to our practice is estate mediation, which focuses on settling estate disputes without going to court.

An unbiased mediator is appointed to facilitate negotiations between the parties involved. This allows the estate to be settled much more quickly, eliminates the cost of escalating

the case to court and minimizes the emotional damage to family members.

Claims made against estates are usually made in times of great stress and are therefore highly charged with emotion. Allowing the parties to meet privately, in a place and time of their convenience, creates an atmosphere more likely to produce a lasting and satisfying settlement than taking the dispute to court. Often, just having all the individuals concerned willing to meet and discuss the issues together allows progress to be made quickly.

During the mediation process, the mediator can often help bring to light what the underlying issues may be motivating the dispute. With experience anticipating potential challenges to wills, and resolving issues that arise in litigation, he is particularly sensitive to reading family dynamics.

*Continued on reverse*

## Do you need a lawyer just to do a will?

A will serves many purposes and that's why it's important to get legal help when preparing yours. Keep in mind that lawyers love those ready-made will kits because, down the road, they almost always generate a lot of legal business for us.

There have been many cases reported of mistakes being made by people using will kits, for example, not using the right witnesses. In Ontario, you need two witnesses to a will and the witness cannot be a beneficiary. A lot of people know that, but they don't realize that a spouse of a beneficiary cannot be a witness either. Also, the language could be conflicting or unclear, which may necessitate an application to the court for interpretation.

*Continued on reverse*

"Estates should be left  
to loved ones,  
not to attorneys."

- Walter Heiden

**Charles Ticker is the lawyer with *heart!***

**Charles B. Ticker**  
Law Office



## Mediation, not litigation (continued)

Ticker Law is beginning to get involved in more estate mediation, and expects to see much more need for this type of legal assistance in the future. Charles Ticker recently completed an intensive course of mediation training at Harvard Law School in order to be as effective as possible in the roles of both mediator and counsel for a party at mediation.

Mediation is definitely the direction being taken all over North America. Of course, the best way to avoid any kind of legal issue is to ensure your estate planning is current and correct.

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## Do you need a lawyer...(continued)

Wills can be challenged and the first advantage of using a lawyer is to make sure the will is properly drafted. Also, the lawyer will ensure that that will is properly and formally executed, which will help avoid other mistakes. In some situations, a lawyer can anticipate a problem or a challenge and help head it off.

A common challenge is to question the capacity of the person at the time he or she made the will. That's why a lawyer will ask such detailed questions and take careful notes about beneficiaries, types and values of assets. This is done in order to confirm and document that the client is competent to give instructions.

If a will is contested, our focus is on trying to get that dispute resolved as soon as possible because it can be extremely expensive - not only financially, but emotionally - to the parties.

These are people that are ultimately going to be in each other's lives. They're going to have family events; their children may be close friends. When brothers and sisters are fighting, we work hard to repair that relationship so they can move on for the sake of their families.

We can't stop someone from challenging a will. But we can do our best to ensure your assets are distributed the way you intended.

After all, that's exactly why you made a will in the first place.

## You might be surprised

You know that Ticker Law has expertise in estate law. But did you know that we also handle these types of law?

### Employment

We can review employment offers, termination packages or provide representation in wrongful dismissal cases on behalf of employees and employers.

### Personal injury

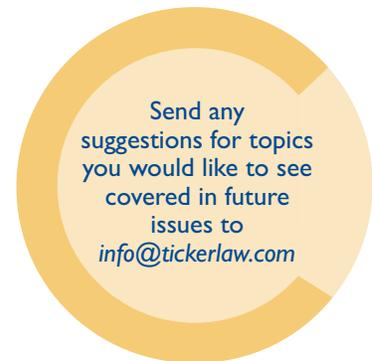
We have a team of associated lawyers with extensive experience representing plaintiffs in serious personal injury cases.

### Real estate

We will review, register and file all necessary documents for residential and commercial transactions.

### Business

We are experienced in corporate contracts and can assist with succession planning.



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