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## **Wills and Estates Case Study**

### **The Last Will**

It was 3 p.m. on Friday, September 23, 2009, and Janet Darden had promised to contact her client, Sylvain Pelletier, by the end of the day. Sylvain's previous lawyer had obtained an opinion from a respected senior practitioner recommending a shortcut that would save the client a significant amount of time and money, but that would, in Janet's view, be unethical. Janet only had two hours to decide what to advise her client.

#### **The Lawyer**

Janet Darden was called to the bar in 1995 and practised with the Ottawa firm, Galloway Vines LLP for 15 years. She was certified as a specialist by the Law Society of Upper Canada in the areas of Estates and Trusts and Civil Litigation. She spoke frequently at CLE programs on topics related to estate litigation and wrote two books on the subject. Janet built a reputation as a skilled advocate for her clients in court. When she first met Sylvain Pelletier, who had been referred to her by a friend in a boutique litigation firm, she was reluctant to take him on as a client. He had already retained and dismissed three previous lawyers and very few steps had been taken on the file. After speaking with Sylvain and reviewing his file, Janet realized that the problem was not that he was a difficult client, but that the matter had been too complex for his previous lawyers to competently handle.

#### **The Client**

Sylvain Pelletier was 75 when he consulted Janet. He told her that he had lived next door to Doug Holtz for over 30 years. Doug was 10 years older than Sylvain. They had a lot in common and spent a lot of time together, particularly after their wives passed away. Neither had any children and they agreed to be the estate trustees of each other's wills. Doug was very successful in the advertising business and when he died, he left an estate worth approximately \$2 million. Sylvain's previous lawyers had never explained his duties as an estate trustee to him and he was upset to learn from Janet that he should have made an inventory of Doug's non-monetary assets before distributing the property to the beneficiaries. He showed Janet letters he received from some of the other beneficiaries complaining about how long it was taking him to settle the estate. Sylvain told Janet that he did not really care about how much money he received from the estate, as he had a good pension and a significant amount of savings. He just wanted to get the matter settled as Doug intended.

## **The Wills**

When Doug died, his sister found four documents in his files:

- 1) A Will prepared by a lawyer, naming Sylvain, Doug's sister and her two children as beneficiaries;
- 2) A photocopy of the Will with handwritten notations as to minor bequests to the Liberal Party, the Humane Society and the University of Ottawa;
- 3) A Codicil to the Will, stipulating that Doug wanted to leave his Rolex watch to his nephew Jack, and his late wife's wedding ring to his niece, Amanda; and
- 4) A note Doug wrote the day before his death and clearly addressed to Sylvain, in which he mentioned a few additional minor bequests to his sister and her children, then stated that he wanted to "leave the rest to you to choose from as you see fit."

## **The Conflicting Opinion**

The lawyer who handled Doug's matter just prior to Janet did not have very much experience in the estates and trusts area, so before he applied for a Certificate of Appointment of Estate Trustee, he requested a written opinion from a senior practitioner as how to identify the last Will and Testament. Janet knew the practitioner very well and respected his expertise, but when she read his opinion she was taken aback. The senior lawyer's advice was to set aside the note that Doug wrote to Sylvain the day before he died and consider the photocopy of the will with the handwritten notations and the Codicil to be the deceased's last Will and Testament.

This proposed course of action struck Janet as highly unethical. At first she was tempted to tell Sylvain to disregard the opinion. She considered obtaining Sylvain's consent to call the other lawyer and discuss the matter, but was reluctant to appear to be criticizing his opinion. If Sylvain followed Janet's advice to apply for direction from the court, the matter would be prolonged another 18 months and could cost the estate at least another \$50,000. Janet could not predict with certainty what the court would decide. If a judge agreed with the opinion to set aside the note, the client would feel that he had wasted his time and money by following Janet's advice.

## **Conclusion**

Janet consulted her partners and obtained various opinions as to what to advise Sylvain. She did not agree that the note should be set aside. On the other hand, she could not just ignore the opinion. She needed to find a solution that would meet the client's objectives without sacrificing her principles and duties as a lawyer.