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Effective Legal Support: Estate Administration

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Contentious Estate Matters: Tips for Preparing Materials

Effective Legal Support: Estate Administration

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INTRODUCTION

Legal assistants and paralegals play an integral role in wills and estates practices. Like real estate, a well-managed estates practice should be highly leveraged, and is an area of law where legal assistants can have a significant impact and be the main source of contact with the lawyer's clients. The purpose of this paper is to provide an introductory review of common estate litigation matters, including the preparation of materials and the overall file management. Further, this paper provides a number of precedents that can be used as you encounter each of these issues.

Tips on collecting information

Many lawyers will agree that client management, including document production and information gathering, is one of the most time-consuming matters in estate litigation. Legal assistants can help keep this to a minimum by having a good understanding about what kind of information is needed, educating the client as to what is needed, and monitoring the receipt of that information (or, more often, its non-receipt).

Much of estate litigation takes a wait and see approach – the application for probate or administration is filed, notices are sent, and the team is waiting to see what will happen. Or, a family member makes a claim and it remains to be seen how litigious the matter will become. Often, estate matters are not truly contentious at all – processes are being followed to preserve rights but at the end of the day, everybody in the family wants to do what is right (e.g. provide a greater share of the estate to a dependent adult child). However, best practices would suggest that file management starts with the idea that the matter will end up in court. Even if the matter does not end up in court, document discovery and questioning may be steps that are completed before the file is closed.

Common tips for use in keeping track of information:

- (a) Whether file is electronic or not, create a separate subfolder for “Documents for Disclosure”, or prepare a binder with a table of contents. Every piece of information that comes in which is disclosable should be copied to this file, so it is easier to sort through later.
- (b) Consider the use of questionnaires to get at information as quickly as possible. For example, we will send our clients questionnaires for wills drafting, estate administration, and adult guardianship and trusteeship.
- (c) If the matter is not urgent, consider telling clients that the lawyer will not begin drafting until the client completes their own “homework”. This is a firmer policy that

must be confirmed with your lawyer first. However, I find that sometimes this motivates clients to do their own work first, and saves time on the drafting side of things. I have often had to redraft applications as newer information arrives.

- (d) Create a table, in Word or Excel, to keep track of key information. For example:

Information Needed	Dated Requested	Date Received	Location

The follow-up to track down outstanding information should be first handled by the legal assistant, and not the lawyer, in order to keep costs down for the client. However, most lawyers will want to be kept informed if you continue to have serious difficulty with a client, and may wish to follow up themselves after the legal assistant has tried a couple of times, or if the matter is urgent.

Legislative sources

There are a number of main legislative sources from which provide guidance for estate administration and litigation. These are:

- (a) *Wills and Succession Act*¹

- Provides the intestate succession ordering rules;
- Describes how to designate beneficiaries under registered plans;
- Defines “family members” as those who are entitled to maintenance and support ;
- Sets out the entitlement for “family members” to make claims against the estate;

¹ SA 2010, c W-12.2 [WSA].