MULTIPLE *Wills*

*U*sing multiple wills estate planning strategy may be beneficial for individuals, who maintain large portion of their assets in privately held corporations. The potential savings on Estate Administration Tax ("EAT"), resulting from implementation of the multiple will strategy, is an opportunity worth exploring. In Ontario, EAT is paid by all estates an application for a Certificate of Appointment (formerly probate certificate) of estate trustee with or without a will. EAT equals $15.00 per $1,000.00 of estate value[1]. To put this into perspective, an estate worth $1,000,000.00 will pay about $15,000.00 in EAT. When the estate is large, the amount of EAT owed on filing of the probate application could be substantial.

When a testator uses the multiple wills solution, only one of the wills (the Public Will) will be presented with probate application, on which the EAT is paid. The Public Will would deal with disposition of the property such as testator's personal bank accounts or shares of publically traded companies, where the estate trustee would be required to present the Certificate of Appointment to access and administer assets. However, assets held by private corporations, in which the testator is a substantial, if not the only shareholder, can be administered by invoking corporate authorities and hence the estate trustee would not require a Certificate of Appointment. The estate trustee holding the Private Will that deals with disposition of corporate assets will be sufficiently authorized to deal with the property held by the private corporation. Moreover, the use of the Private Will that is not subjected to the scrutiny of the Courts, permits the testator and his beneficiaries to maintain privacy over their business affairs.

Granovsky v. Ontario is the leading authority that deals with the use multiple wills. In her decision in *Granovsky*, the Honourable Justice Greer, clarifies that "t*here is no legislative prohibition against asking the Court for a limited grant of the deceased's Primary Will*" and "*that there is no requirement for the Estate Trustees to submit the deceased's Secondary Will to probate or to pay probate fees on the value of the assets governed by.*"

Assets that can be included in the Private Will that can be transferred without a Certificate of Appointment are not limited to private company shares. They can include shareholder loans owed to the testator by private companies, loans to family members or death benefits from insurance policies, to name a few. The use of multiple wills requires careful drafting to ensure that the wills do not cancel each other out, leaving the estate without any valid will.

The use of multiple wills may not be appropriate for all large estates holding assets in private corporations. This strategy must be part of a carefully designed estate plan that is taking into consideration all other issues affecting the estate, such as the needs of the estate beneficiaries. EAT is the probably the smallest of taxes paid by the residents of Ontario and care must be exercised to ensure that probate-avoidance technics implemented into the estate do not lead to serious problems that would tie up the estate and its beneficiaries in Courts for a long time.

[1] The actual formula is $5 per thousand for the estate value of $50,000 or less and $15 per thousand thereafter.

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