

TESTATOR BEWARE!

The Globe and Mail recently published an article, “The Dark Side of Canada’s Inheritance System”, to be found in full at <http://www.theglobeandmail.com/report-on-business/the-dark-side-of-canadas-inheritance-system/article1930994/> which outlines some issues which are important for us all. The case involves problems which arose over the will of a wealthy Canadian mining promoter.

Mr. Penna bequeathed his entire estate except for a \$1 million dollar bequest to his wife to a group of charities. 15 years after his death, the charities have received nothing, and his wife did not receive any of her inheritance before her death. Mr. Penna did everything right – had his will prepared by a lawyer and named a trusted colleague as trustee of the estate. What could possibly go wrong?

There are weaknesses in the Canadian legal system as it applies to estates and banking. Because of these weaknesses, the trustee was able to take millions of dollars from the estate for his own use without detection. None of the financial institutions charged with looking after the money noticed that anything irregular was going on for seven years.

This case involved a very large estate – why is it important to us? It is projected that the baby boomers will, collectively, bequest trillions of dollars, much of it to charities, with the expectation that the trustees chosen will be trustworthy. Unfortunately, this is too often not the case. Legal experts report increasing numbers of cases where trustees breach their trust by diverting estate funds to their own use.

The article outlines both how the trustee diverted cash but also the weakness of the legal and financial systems in identifying and dealing with such cases. The trustee received 14 months in jail – not much considering the scope of his activities.

The real message here, other than the need for review of the legal system, is that one should probably not name friends or relatives as trustees – better to name a professional whose work will be overseen.

It is worthwhile to read this article – it could happen to you.