

Planning

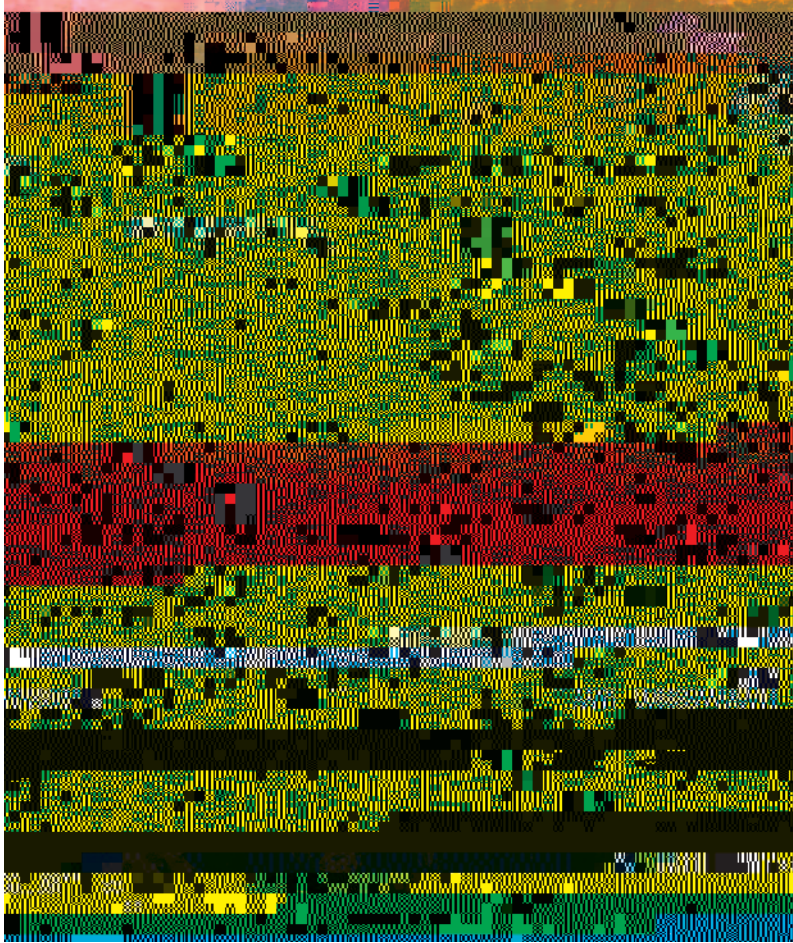
MAKES A DIFFERENCE

UNIVERSITY

Gift Planning, Queen's University

walls hewn and shaped from local limestone by skilled masons like Daniel.

Michael Joseph Lynch became a salesman with the dry goods company Macnee & Minnes. Later, as he was established in his career, he gave back to his church community. A marble plaque in the nave of St. Mary's Cathedral on Johnson Street pays tribute to 15 benefactors who contributed



Gustave Caillebotte. *Iris bleus, jardin du Petit Gennevilliers*, c. 1877. Oil on canvas, 100 × 150 cm. Purchase, with funds by exchange from the R. Fraser Elliott Estate and the Bequest of F.W.G. Fitzgerald. Purchased with the assistance of a Moveable Cultural Property grant accorded by the Department of Canadian Heritage under the terms of the Cultural Property Export and Import Act; Acheté avec l'aide d'une subvention des biens culturels mobiliers accordée par le Ministère du Patrimoine canadien en vertu de la Loi sur l'exportation et l'importation des biens culturels, 1987. BDC BT 11

history or national life, its aesthetic qualities, or its value in the study of the arts or sciences. Further, the Federal Court of Appeal overturned the lower court's decision and confirmed that objects may still form part of Canada's national heritage even if the object or its creator do not have a direct connection to Canada.

Canada provides enhanced tax incentives to encourage donations of cultural property to certain cultural institutions in Canada, including Queen's University. The Heffel case had raised concerns that some donations of artwork that are of outstanding significance, but of foreign origin, may not qualify for these enhanced tax incentives. Those concerns have

now been resolved. Significant cultural objects that originate outside Canada do not require a direct connection to Canadian cultural heritage to qualify for these enhanced tax incentives. Therefore, they should be included in any comprehensive philanthropic gift planning.

Karen Cooper is a member of the Queen's University Gift Planning Advisory Committee. She is a partner at Drache Aptowitzer LLP in Ottawa, where she practises charity and not-for-profit law with an emphasis on corporate and tax issues.

What does an executor do?

An executor "executes" your will, carrying out the terms of your will and administering your estate. An executor is responsible for collecting assets; satisfying debts; filing income tax returns and paying all taxes owing; paying legacies (cash amounts provided in your will); carrying out specific bequests of property, such as real estate and personal effects; and distributing the remainder of your estate to those entitled under your will.

Executor's duties:

What are the executor's duties?

The executor role is confined to "

DECISION MAKING: Where more than one executor is appointed, the legal rule is that all executors must unanimously agree on any decisions. To facilitate decision-making (and avoid deadlocks), your will can include a majority decision clause to allow for majority rule. This provision can also include a requirement for one or more named persons to be in the majority, effectively giving them a veto.

REPLACEMENT AND ADDITIONAL

EXECUTOR : Your will can also provide a mechanism to name replacement executors to ensure there is always a sufficient number to allow appropriate succession of the executorship. Your will can also give a specific person the power to appoint additional executors.

COMPENSATION: Each Canadian jurisdiction allows for executors to claim compensation, but the amount is often not fixed and is subject to court discretion, and this can result in disputes and legal fees. It is important to consider whether there should be express provisions in your will to deal with compensation. If you wish to compensate your executor, you should state the amount of compensation, whether this is determined through a formula, a fixed amount, an hourly rate based on time spent, or a combination of these approaches.

family friend or one or more professional executors, such as a professional adviser or trust company.



There's no license or qualifying course to become an executor, and yet the role has enormous responsibility, as well as liability. It's becoming increasingly complex, given changing laws and tax rules.

Choosing your executors requires you to keep in mind a number of factors. Making a careful, informed, and thoughtful choice will give you the peace of mind that you have done your best for your family and those who will be your beneficiaries.

Margaret O'Sullivan, Artsci' , Law' , is the chair of the Queen's University Gift Planning Advisory Committee. She is the managing partner of O'Sullivan Estate Lawyers in Toronto.

Readers are cautioned to consult their own professional advisers to determine the applicability of information and opinions in "Planning makes a difference" in any particular circumstances. Tax and legal content included in "Planning makes a difference" has been written for Canadian residents and taxpayers. The Queen's Gift Planning office produces a separate newsletter with charitable giving information specific to U.S. residents twice annually. If you wish to join this mailing list, please let us know by emailing gift.planning@queensu.ca.