

KEEPING CURRENT

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Seeking Relief but Finding Regret

By Nadia Bechai

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Being named the executor of an estate is often a thankless job. It requires considerable time, patience, and dedication – over at least a year and a half, all while grieving the loss of the deceased.

This is why lawyers will often raise the question for the named executor: are you sure you want to act? This is not a pointless question – the courts have long held that once a person begins to act as the estate's executor, they cannot easily resign. Therefore, careful consideration of the commitment required is recommended because if the executor is not up to the task, renouncing before acting can provide the desired relief.

In the recent case of [Chieffallo Estate v. Blair 2025 ONSC 3411](#) (“Chieffallo”), one of the named co-executors renounced his role but soon regretted his decision.

The court was therefore asked to determine: while an executor cannot easily resign after beginning to act, could one be quickly reinstated if they regretted their decision to renounce?

Yvonne Chieffallo died on December 26,

2021 leaving a last will and testament that named two of her five children, Michael and Elisa, as joint executors of her estate. Elisa's husband, Patrick, was named as an alternate executor. On March 23, 2022, Michael signed a renunciation to act as executor. Accordingly, Patrick assumed the role. Within days, Michael sought to retract his renunciation.

The reason for Michael's retraction is easily understood when reviewing the will. Yvonne's will granted the executors a broad discretion to distribute her estate, “as [they], with a view to the best interests of the family, in their absolute and unfettered discretion, deem fit and appropriate.”

Michael quickly discovered that he did not agree with how his sister and her husband intended to divide and distribute their mother's estate, and wanted to reclaim the power he gave up to determine the distribution of Yvonne's estate when he renounced.

In attempting to be reinstated as an executor, Michael made the following arguments:

1. he pleaded with the court to retract his renunciation because:
 - a. he had not been given the opportunity to obtain legal advice prior to renouncing;
 - b. he was unaware of the contents of the will; and
 - c. he was misled about the consequences of his renunciation; and

2. In the alternative, his renunciation should be rejected based on the doctrine of “intermeddling” – Michael asserted that as he had already dealt with the deceased’s assets, his renunciation should be prohibited.

While the court confirmed that it has the power to allow a retraction in a proper case, the court found that this was not one of those cases for the following reasons:

1. Michael had sufficient time to obtain legal advice. Michael claimed that he did not have enough time to obtain legal advice on the renunciation, but the court found that Michael did not “quickly” renounce given that he signed the document approximately two and a half months following the death. In the court’s view, this was ample time to obtain legal advice. Furthermore, the court did not find Michael’s claim credible given that:
 - a. Patrick and Elisa asked Michael to attend at the lawyer’s office to sign the renunciation, and Michael refused;
 - b. Michael attended voluntarily at Patrick and Elisa’s house to sign the renunciation; and
 - c. Elisa had gone so far as to warn Michael not to later claim that he lacked knowledge of the document or failed to obtain legal advice.


2. Michael should have known the contents of the will. As a named executor, it was up to Michael to review the will and seek to understand its terms, with the assistance of a lawyer if he so desired, and which the

court already determined he had ample time to do. The court found that Michael knew where the will was located and had access to it all times. Furthermore, the will was on the table in front of him when he signed the renunciation. The court also dismissed the idea that Elisa was obliged to locate the will for him and ensure that he had read it.

3. Michael was not misled as to the effect of renunciation. Michael claimed that he did not understand the purpose and the consequences of renouncing. The court rejected this argument and instead found that the document signed was short and clear. In any event, as the court had already concluded, Michael had ample time to have a lawyer explain the document to him.

4. Michael’s work had not invoked the doctrine of “intermeddling”. Michael sought to rely on the decision in [*Chambers Estate v. Chambers*, \[2013\] ONCA 511](#) where the Court of Appeal found that “even a slight act of intermeddling with a deceased’s assets may preclude an executor from subsequently renouncing.” Prior to renouncing, Michael had transferred funds from one of the deceased’s bank accounts to another, and had paid household bills. However, the court found that he had done these actions at Elisa’s direction, minor steps taken to preserve the estate. Therefore, they did not amount to an implied acceptance of the role of executor. The court accepted other evidence that in fact, Michael was unwilling to administer the estate, stating that he did not want serve as trustee for a trust established under the will.

This simple case is a good reminder that while one must carefully consider their ability



to commit to the role of executor, one must be equally thoughtful when considering renouncing, including taking the time to review and understand the terms of the will and the renunciation, and seek appropriate advice.

Contact Us

If you have a tax and estate matter and are in need of legal advice, please do not hesitate to contact Nadia Bechai, at 416.865.6717 or nbechai@grllp.com.

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