

Building on a family legacy

Michael Lynch, Meds'58

BY ANDREA GUNN

At home in East Aurora, N.Y., Dr. Michael Lynch, Meds'58, reflects on what he's most proud of in life. His children, obviously. They're all grown now, and well established in their own careers. His own profession, as a psychiatrist, in which he helped so many people over the years. He's proud of the work of his father Gerald, also a doctor, who inspired Michael to go to Queen's to study medicine and serve his community in a healing profession.

Like many of us, Michael Lynch is curious about his family history. He's done a lot of genealogical research, which, combined with family stories passed down through the generations, tells the history of the Lynch family: the ones who took risks, who suffered great losses, and who kept striving to make a better life for their children. Dr. Lynch has honoured some of his forebears in the named gifts he has made to Queen's University. Without them, he wouldn't be where he is today, the proud patriarch of a successful



Michael Lynch

family, a noted medical expert, now retired, in both forensic psychiatry and in the diagnosis and treatment of depression.

Michael Lynch's great-grandfather, Daniel Lynch, immigrated to Canada from County Kerry in Ireland in 1869. A stonemason, he settled in Kingston with his wife and young son. But in 1885, Daniel was tragically killed in a workplace accident, as he was building a porch on Bagot Street.

"That left my grandfather, who had already lost his mother, an orphan at the age of 15," says Michael Lynch. "In my mind, he was, in his own way, the most successful of the family – he built himself up the most."

After Daniel's death, his son, Michael Joseph Lynch, found solace and support from the local Catholic community, through the Knights of Columbus and as a member of the congregation at St. Mary's Cathedral. Michael must have been reminded of his late father every time he stepped into the cathedral, its

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 to the cathedral's expansion in the early 1900s. Each name is paired with a painting of a saint donated to the cathedral. Michael Joseph Lynch was the donor responsible for the painting of St. Louis, donated in memory of his parents. St. Louis is the patron saint of stonemasons and orphans.

Michael and his wife, Helen, raised four boys in Kingston. But sadly, Michael didn't live to see his sons into adulthood: he died at the age of 44 in 1914. His oldest son, M. Gerald, was only 15. Gerald and his three brothers all went on to attend Queen's. In 1921, Gerald graduated from Queen's Medicine; Daniel O'Gorman followed, graduating from Medicine in 1922. Michael Leo graduated from Arts in 1925 and Commerce in 1927. George graduated from Medicine in 1931.

M. Gerald Lynch, MD'21, became a family doctor, settling in Webster, N.Y., a suburb of Rochester. He was a well-known and respected member of the community. When he retired in 1967, the town of



M. Gerald Lynch

Webster declared a community-wide Dr. Michael Gerald Lynch Day. A testimonial dinner was thrown in his honour, and 500 people, many of them former patients, attended the event.

Not only did M. Gerald Lynch inspire two of his brothers to follow his lead to study medicine at Queen's, he inspired his son, Michael John Lynch, as well. Michael's class, Medicine '58, was a small, close-knit one facing a very tough curriculum. The class started, in 1952, with 64 students; only 44 of

them graduated six years later. "The set-up at that time was," Dr. Lynch remembers, "you took an exam at the end of the year. And if you failed it, you took a supplemental exam in August. If you failed that, then you repeated your entire year, including the subjects you had passed."

Michael Lynch graduated and went on to specialize in psychiatry. "Truthfully," he says, "it was probably to take a look at myself and try to find out how I became the person that I am. Psychiatry was a whole new branch of medicine. I found it fascinating!" He was awarded a Fulbright scholarship in 1961 to study at Maudsley Hospital, a psychiatric facility in London, U.K.

Returning to the U.S., he started in private practice and took his board exams to become certified in psychiatry. Over the years, he focused on forensic psychiatry, a field at the intersection of medicine and law. He became

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well known as an expert on the insanity defence. He was appointed to serve on an American Psychiatric Association (APA) panel that advised the Supreme Court on psychiatric issues.

But as established in his career as he was, Dr. Lynch's studying days weren't over. In 1994, the APA created a sub-specialty in forensic psychiatry. "The APA decided that there were 356 people in the U.S., Canada, and Great Britain who were eligible to take the exam, myself included," recalls Dr. Lynch. "I had hoped that they would grandfather me in. But no such luck. So, at 61, I took the first forensic psychiatry exam, and I passed."

Michael Lynch has many career successes to look back on, but his proudest professional accomplishment is his work in treating depression. "I was able to help people get well, many of them who were sick for years, not properly diagnosed. I cannot tell you how emotionally rewarding that was."

He goes on to say, "Getting into medicine gives you an opportunity to serve your fellow man. My career in forensic psychiatry and in treating depression was the most rewarding thing I could have done."

Getting through medical school takes a lot of hard work, skill, perseverance ... and resources. To honour the people who, through their own hard work, skill, and perseverance, made his life journey possible,



Michael Lynch

Michael Lynch, Meds'58, set up funds to help the next generation of medical students at Queen's. These awards are given annually on the basis of financial need and academic achievement.

- The Dr. M. Gerald Lynch Award in Medicine for students entering the second year of Queen's Medicine
- The Michael Joseph Lynch Excellence Award in Medicine for students entering the third year of Queen's Medicine
- The Dan Lynch Award for students entering the final year of Queen's Medicine

Dr. Lynch has also generously remembered Queen's in his estate. His bequests will ensure that the awards that he set up will grow in years to come and will also establish a Chair in Psychiatry. Dr. Lynch's gifts to Queen's will not only reduce the financial burden for medical students, they will also provide resources to recruit leading faculty and ensure continued excellence in medical education and research.

If you would like more information on how to create your own meaningful legacy at Queen's University, please contact the Gift Planning office at gift.planning@queensu.ca or by calling 1-800-267-7837.

Gifts of cultural property

Philanthropic gifts of non-Canadian artwork can qualify for enhanced tax incentives

BY KAREN COOPER

In the last year, legislative changes have been enacted in Canada that clear up uncertainty regarding gifts of cultural property and their qualification for tax incentives. Donations that qualify as gifts of Canadian cultural property can claim exemption from income tax for any capital gains arising on the disposition of the property.

These changes arose from a 2018 Federal Court decision regarding the sale and export of a French Impressionist painting and that decision's reversal by the Federal Court of Appeal.

The ruling by the Federal Court of Appeal restored the decision of the Canadian Cultural Property Export Review Board (CCPERB) to delay the issue of an export permit for a painting sold by Heffel Gallery to a U.K. buyer, on the basis that the painting was of "national importance." The painting, *Iris bleus, jardin du Petit Gennevilliers* (1892) by Gustave Caillebotte, had been in a private Canadian collection for 50 years. The legislation at issue, the *Cultural Property Export and Import Act* (CPEIA), is intended to restrict exports of works of "outstanding significance" and "national importance." These terms are also used in the definition of "total cultural gifts" in the *Income Tax Act* (ITA) to determine whether a particular gift is eligible for the enhanced tax benefits of a gift of cultural property.

The initial Federal Court decision restricted the application of the criterion of "national importance" to works with "such a degree of national importance that its loss to Canada would significantly diminish the national heritage." As a result, CCPERB required applications for certification of cultural property to demonstrate a direct connection with the cultural heritage that is particular to Canada, including the extent to which the object had an influence on the Canadian public or the practices of Canadian creators or Canadians working in a particular field of work or study. This interpretation created uncertainty in the cultural community and would likely have negatively affected the quantity and quality of donations made to Canadian cultural institutions, particularly with respect to major works with tenuous connections to Canada. And contrary to the original intent of the provision, this would have reduced the transfer of cultural property from private to public collections.

As a result, the federal government enacted changes to the ITA and CPEIA to remove the requirement that property be of "national importance" in order to qualify for the enhanced tax incentives for donations of cultural property. Effectively, a gift of cultural property for the purposes of the ITA will only have to be a work of outstanding significance because of its close association with Canadian



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Gustave Caillebotte. *Iris bleus, jardin du Petit Gennevilliers*, c. 1892. Oil on canvas, 55.2 × 46.4 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'un 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*, 2019.

After three years of legal disputes, Caillebotte's painting was purchased by the Art Gallery of Ontario. You can learn more about the painting at <https://ago.ca/agoinsider/step-inside-caillebottes-garden>.

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.

Choosing your executors

BY MARGARET O'SULLIVAN

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.

Executors and trustees: what’s the difference?

The executor role is confined to “settling” the estate, whereas the trustee role applies if there are continuing trusts under the will (as opposed to an outright distribution). The trustee role includes managing any trusts under the will until they terminate in accordance with the terms provided by the will. The trustee looks after investment management, income and capital distributions, annual tax compliance, and maintaining accounts for each trust.

You may appoint one person to act as both executor and trustee, or you may want to choose different people for each role.

When choosing an executor, there are specific legal and tax considerations as well as qualitative considerations. Bear in mind that a will only comes into effect on death. So long as you are capable, your will can be changed

at any time to reflect your objectives.

Throughout your lifetime, your will may change to reflect your changing situation – and your choice of executors.

Legal and tax considerations

AGE: An executor must be, at a minimum, the age of majority. There is no legal upper age limit unless a will provides one. It’s important to ensure that your executors are sufficiently financially mature, for instance, when considering appointing a younger person to the role. If your potential executor is of advanced age, you will want to consider their ability to carry out the role in the future.

NUMBER OF EXECUTORS: The number of executors will often depend on who has a financial interest in your estate. You may only need to appoint one executor if that person is your sole beneficiary – and if that person is able to carry out the role. Where there are multiple beneficiaries, having more than one executor is generally advisable, for risk management and financial accountability. Having at least two executors ensures that there is continuity should one executor die or not be able to complete the administration of your estate. Having multiple executors allows you to build a well-rounded executor team: some with technical and financial skills, others with knowledge of, and relationships with, the family and beneficiaries.

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 EXECUTORS: 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.

NON-RESIDENT EXECUTORS: Complex issues arise under Canadian tax rules if an executor is not a Canadian resident. The tax residence of an estate is considered to be where its “mind and management” is, which is often – but not necessarily – where a majority of

executors reside. As well, if an executor is not a Canadian resident, some jurisdictions require a bond or other security to be posted to protect the beneficiaries. This bond can, in some cases, be reduced or dispensed with. It’s important to get legal advice to address these considerations. There are also issues with U.S. resident executors being able to give instructions on investment accounts with certain Canadian financial institutions if they aren’t licensed to provide investment advice to a U.S. resident under U.S. securities rules.

Other considerations

CHARACTER: In appointing your executors, you are giving them full control over all that you have spent your lifetime building. You want to choose someone who is trustworthy, impartial, and fair.

BUSINESS RELATIONSHIPS: A business partner may not be an appropriate choice if they have an economic conflict with your estate and its beneficiaries. An executor must act only in the best interests of your estate and its beneficiaries. Business and financial acumen are important, and some or all of your executor team should have these skills. Equally important are willingness, interest, and availability to take on the role of executor.

FAMILY RELATIONSHIPS: In appointing their children to be executors, many people assume that the siblings will all work together. But realistically, power dynamics often change after parents die, and fractiousness can arise among family members. Having a neutral executor who is not a family member may be a solution. Neutral executors can include a

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

In conclusion

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'78, Law'81, is the chair of the Queen's University Gift Planning Advisory Committee. She is the managing partner of O'Sullivan Estate Lawyers in Toronto.

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Queen's University
Kingston, ON K7L 3N6
Tel 1.800.267.7837
613.533.2060
Fax 613.533.6762
Email gift.planning@queensu.ca
queensu.ca/alumni/giftplanning

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