

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

**LawyeredEp81**

**[00:02] HUSEIN:** This is Episode 81 of Lawyered. I'm Husein Panju. And on this podcast episode and our season nine premiere, we're speaking with Raphael Tachie, about a current issue in the area of Wealth Management Law. First of all, we speak about a new trend of protecting vulnerable clients, in the financial services sector. Several big industries are introduced new codes of conduct in the name of consumer protection, and we'll discuss what the changes will look like and how to properly work.

**[00:31]** Next, we'll speak about the legality of electronic wills. The province of British Columbia recently became the first province to recognize electronic wills, it will find out and discuss some new unique factors that lawyers and clients ought to consider. We'll also speak about the role of beneficiary designations, and how those might impact what happens to one's assets after death. And in our Ask-Me-Anything segment, we will cover a bunch of topics submitted by listeners about topics ranging from secession planning to cultural sensitivity, and more in between. All that and more is coming up in just a bit. This is Lawyered.

**[01:15]** Hello, everyone, and welcome to the show. Welcome back to another season of the show. We are in Season 9 of Lawyered, and it's a true delight to be back on the megaphone speaking with all of you, I say with all of you because to me, it feels like a dialogue, even if, while you're listening, it may feel like a bit of a monologue at times. As you can probably tell, depending on where you are listening, we are starting this season a bit later in the calendar year than normal.

**[01:45]** Some of you who know me personally, it's been a bit of an interesting time as of late for a variety of reasons. And I wanted to ensure that I was delivering the show in a quality and respectful of your time. This podcast is really important to me, I'm very grateful. It's important a lot of you as well, I know that this is time that you're spending out of your day. So, I feel like we've got the quality that we need right now. We've got a great lineup of guests, and topics. And so I'm really excited for you to see what we have in store.

**[02:16]** This year, you're going to likely hear from some names that are familiar to you. And also from some who are not familiar. As in past years I have tried to curate a lineup that has diversity in a variety of formats, which includes

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

geography and ideology as well. So, it's always nice to have some high-profile lawyers on the show, which I've had times. But I think it's also nice to have some up-and-comer voices as well, to kind of change things up and make the show more interesting as well.

**[02:46]** On today's episode, we're going to kick off the season with a lawyer who I've gotten to know pretty well over the last year or so through some of my community work. He's very well known in the legal bar in his own area of expertise. And he's also active in a variety of other spaces as well, including in the equity space. And we're going to speak about an area of law that I know very little about, Wealth Management Law. This has been a topic that's been requested by many of you listeners in the last year or so. So, I'm excited to hear what you think. And without further delay, here's our episode with our guest, Raphael Tachie.

**[03:26]** Raphael is a partner and the head of Gowling WLG's Private Client Services Group in Vancouver. And his practice is primarily focused on providing strategic legal advice to high networth clients, and financial institutions across all areas of estates and trusts law. Raphael assists high networth individuals, families, entrepreneurs and business owners with estate and trust planning, business succession planning, and capacity matters and planned charitable giving. He also has extensive experience in delivering strategic advice to insurance investments and trust companies with regard to the impact of the laws and regulations relating to older and vulnerable customers, incapacity, estate's trust and beneficiary designations on their products, services and market conduct.

**[04:10]** He collaborates closely with financial institutions and their advisors. And Raphael is the current president of the Canadian Association of Black Lawyers, also known as CABL and has been a member of several committees of the Cambridge Association and the Canadian Corporate Counsel Association. And above that he also sits on the editorial board of Canadian Lawyer magazine. So, Raphael, thanks for joining us on the show today.

**[04:32] RAPHAEL:** Hello, Husein. How are you?

**[04:34] HUSEIN:** Wonderful, thank you. We know each other a bit outside the podcast for people who may know from the show. I'm also the president of the Canadian Muslim Lawyers Association. So, we've had a lot of engagement

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

together in working on other projects outside this. I'm glad to have you on the show to speak in different contexts.

**[04:52] RAPHAEL:** Thank you. And similar to you, our work in community sometimes overshadows the substantive work we do and our subject matter expertise. So, I appreciate the opportunity to talk about my practice, some of the key issues and have a great conversation with you.

**[05:10] HUSEIN:** Absolutely, yeah. And it's funny, some people who know me from the podcast, don't even know that I'm a lawyer. But yeah, I'm sure on top of everything else you're doing, I can see how that would overshadow it. But there's a lot of exciting things going on this area of Wealth Management Law. And one area particular involves the vulnerable clients, and the financial services obligations. Now, across the financial sectors, regulators are introducing new frameworks and codes of conduct to specifically protect vulnerable clients.

**[05:40]** And these elements are designed to hold banks and professionals to a higher standard, and require them to take greater responsibility for consumer outcomes. And now, many of these regulations are newly introduced. And it's giving lawyers plenty to think about, from an implementation level. So, Raphael, there's a number of things happening at once here. And I know that the federal government recently introduced its regulations for its financial consumer protection framework. And before we get into the regs, specifically, can you just explain the background about why the Consumer Protection Framework was introduced in the first place.

**[06:14] RAPHAEL:** For a long time, Canadians dealing with financial institutions have complaints. And a lot of their complaints were the fact that sometimes as products became more complex and evolved and our understanding what we're buying and purchasing got smaller and smaller, because the product kept getting complex. There are issues around things like buying a product when you didn't really know the features of the product, and its impact.

**[06:45]** So, an easy example, think of I bought a GIC that renews in five years. And I don't know that that's the case. And so I'm expecting five years, I'm locked in for five years, but for five years, I'm going to get my money out of that product. And because I don't understand that it auto renews, I guess the five years, I go to get

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

my money and institution is telling me no, it's auto renewed and now there is a penalty to take your money out of that GIC.

**[07:09]** That's a very basic example. But a lot of what I think my view the Consumer Protection Framework for banks are trying to achieve is to force institutions to, one, provide certain information in a form that is accessible to the ordinary Canadian, and also to help us file complaints—ordinary Canadians can file complaints with banks, and force banks to engage with those complaints in an expeditious manner. Because of vulnerability based on the age and demographic of Canada, we are buying products that are complex, holding them at ages where we're older and susceptible to influence and fraud and pressure and all these things.

**[07:55]** On the other side, financial institutions as a competitive edge, are looking to make the products and the experience with their customers easier, simpler, because of the idea that Apple is going to be a bank one day, and you're just going to interface with all these tech companies and easier ways to deal with it. So, that threat from the outside and the customer experience is driving as much of the change as well as legislative and regulatory and voting trends, pushing the issue of vulnerability and exploitation of vulnerable and older Canadian. And so that, I think, is a convergence of what's happening. It's not really one lever, it's a bunch of levers working at the same time.

**[08:34] HUSEIN:** Okay, that makes sense. So, this framework that we're talking about, this financial Consumer Protection Framework, I have some assumptions, but who is captured by this framework? Who does it apply to?

**[08:44] RAPHAEL:** So, the CPF impacts all federally regulated banks. And so if you are a federally regulated bank, you are impacted by it, but more importantly, these versions of these are showing up in provincial spaces. And so there is an emerging through and work around making financial institutions more responsive to the needs of their customers, and also placing more of an obligation on them to protect their customers.

**[09:13] HUSEIN:** Some commentators are hopeful that this framework will prevent some bank practices that use coercive sales techniques like upselling or mis-selling. Can you tell us more about this and what you think about that?

**[09:26] RAPHAEL:** If I'm going to buy you something that has other upsell features to it, you have to forgive me other agreements, other explanations that relate to that. Don't tell me, "Hey, you're buying... you're applying for mortgage? Yes, you get a mortgage, but that's a lock that you have to get." There is all these things. That is a separate transaction, you have to treat those things as separate transactions and have me understand it, and have me engage in a new agreement relating to those products.

**[09:52]** Now again, I'm using really basic examples to try to illustrate the point but really, that's the big piece. And what you're seeing now is... I think I saw last week, that's a report on mystery shopping experience where people go in mystery shopper banks to see the treatment, whether institutions are responding to their CPF requirements. The more interesting piece that I think everyone will see is you're likely to be getting alerts. So, if you say your bank account, or maybe you have enough money and doesn't impact you. But if your bank account drops below a certain threshold, you probably get a text or an email that says, "Hey, your bank account is below a certain threshold, you might want to top it up or move money." Or you might have a bill coming that's due. You see what I mean?

**[10:34] HUSEIN:** Before it goes to overdraft.

**[10:36] RAPHAEL:** Exactly. And for a long time, some of the complaints was that. I remember talking to this lady that said, "My paycheck is showing up in my bank account. My bank knows that I get paid every Friday. My rent is coming out Friday, but the bank doesn't wait for my paycheck to show up and take the rent out, they take the rent out, charging me overdraft, and then credit my paycheck." And so the bank makes it. So, those experiences, led to complaints. And really CPF is the government's approach to dealing with where there's a feeling of exploitation by financial institutions, or there's pressure on why you're buying or you're being upsold a product that you don't understand, that will impact you later on and those kinds of things.

**[11:25] HUSEIN:** Right. What do you think, like someone who's a lawyer in this area, do you think that this framework will have a meaningful impact on addressing consumer protection?

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

**[11:34] RAPHAEL:** To the clients that I'm focused on and the area am I focused on, I think that's the space that I see direct impact of legislation and regulation, I think, is making an impact. And so again, looking at how, part of CPF is really how you deal with your vulnerable customers and your seniors. And that's represented by the Seniors Code, Voluntary Code by the banks, as well as on the investment side, the amendments to National Instruments 31-103, aimed at older and vulnerable clients.

**[12:06]** All of these things go to what is the obligation of a financial institution to protect us customers, especially when they have a certain knowledge about the customer? So, it's not that it protects everybody, because you don't know all the time what the pressures that your customer is facing or the likelihood that they're being exploited in some way. But when you have knowledge, what's your obligation? What do you do? And to me in that space, one, the regulations are forcing banks to engage with education, and they're being forced to train and educate frontline people. At minimum, people are aware of that.

**[12:42]** The backend of that is putting the regulations aside, because of reputational issue. So, CBC did a whole bunch of series of reporting around these things where it was highlighting exploitations of bank customers in different ways, for example. And for me, the combination of the reputational impact and the legislative changes, making institutions respond to these things in a much more forward-looking way. And I think that's a good thing.

**[13:13] HUSEIN:** I know the implementation deadline has already passed for this. But if you're a lawyer in one of these banks, what do you think you should be thinking of in terms of the responses?

**[13:22] RAPHAEL:** Yeah, so I think one of the things you should be thinking about is working with your business and understanding where the areas of complaints are, that's coming, right? Because that tells you, you might have a gap, or there might be something. I'm looking at, usually, these things require reporting to the FCAC, on certain issues. So, are you able to report in favorable ways? So, are you able to achieve these kinds of metrics and milestones? Those, to me, are the important pieces. It's, are you able to identify the gaps that exists, that impacts your regulatory obligations and two if there's gaps there, do you have a way of helping to address them?

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

**[14:07]** Now, my view of an in-house counsel and those roles is that you don't always have control over those things, but you have to educate your business by basically looking at those issues. And then you're going to have ongoing complaints escalations that you have to deal with. And so you have to help investigate those things. One is, what are the facts or circumstances of that complaint? Two is, what is the obligation of an institution around that complaint? And then finally, are we responding in a way that is adequate, based on our regulatory obligations?

**[14:35]** To me, that is kind of what in-house counsel is having to do around these things. But it also goes to product design, right? So, when you're designing your products, you have to take into account your CPF obligations, and how they impact those products. You have to think about how does CPF impact, then how these products are designed, how they will be sold, how will be their customer experience when engaging with these things. CPF impacts all of these things.

**[15:10] HUSEIN:** Now one of the most recent changes in this area of Estates Law is the introduction of electronic wills in British Columbia. And this approach would allow individuals to sign and store wills digitally, instead of via the old-fashioned paper copies. However, this new development raises some important questions for lawyers and wealth managers to consider. And also engages in questions about how a will can capture someone's testamentary intentions. So, Raphael, as I mentioned, I know that BC is the first province to allow electronic wills. Can you just provide us with a more detailed description of what electronic will look like and how that behaves?

**[15:48] RAPHAEL:** So, an electronic will in BC, is a will that's in an electronic form. An electronic form is a document that's recorded or stored electronically, that can be read by a person, and it's capable of being reproduced in a visible form. So, then an electronic will can be a will that never exists in physical form ever, right? As long as you have the ability to record it, store it and reproduce it on a visible form, then it's a will. What most people listening would have known in this space is recently, I believe, RBC announced a partnership with a company called Epilogue where some of their customers will go to Epilogue to do wills online. There are a lot of these companies that are out there.

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

**[16:35]** If I go there, and I put in my information, and I do a will. I don't print it; I somehow sign it electronically to meet the formal requirements of execution. If I died, and it never got printed, as long as that will exist, that is electronic will. I don't have to use these platforms. But to me, that is probably where a lot of these cases going to future will come from. It will come from people doing it on those places. But I could also sit at home and type, "this is my last testament and declaration. This is what I want."

**[17:07] HUSEIN:** So, I know for conventional wills, right now, there's a lot of formality required in terms of the witnesses and the signatures. So, how does that work in electronic will's context?

**[17:20] RAPHAEL:** Yeah, so in electronic will space, especially in BC, there is execution requirements that go along with that. So, really when you're looking at an electronic will, and in my practice, when I advise other financial institutions who get presented with these documents, what you should be looking for really is that the will is in an unalterable form. So, it is presented to me in a PDF or something that can't be altered after execution. That there is a physical copy, or you could have a digital reproduction of that document. To me, that is really what you're looking at in terms of being presented with electronic will.

**[18:00]** Now in terms of formal execution of it, it has to have a signature it can be an electronic signature, and The Act defines what electronic signature is. And in a manner that was last dated as and witnessed. If you can check it, you have to be able to verify that or sign and witness in the same way you would do that with a paper will. So, the big rule is set out in Section 27 of WESA [the *Wills, Estates and Succession Act*], and really, Section 27 makes a comment that a reference to a signature includes electronic signature, and then it has to contain a reference with statement that that document has been signed electronically.

**[18:49]** And then the institution looking at the document needs to be able to identify the way in which the document was signed and it can't be altered. So, usually, if you use something like DocuSign, there's almost like a lock and date stamped and all those things to indicate when it was signed. And really, that is what you're looking for.



## Lawyered – Episode 81

### Wealth Management Law (ft. Raphael Tachie)

**[19:07] HUSEIN:** I imagine like with a lot of things that are moving to digital, there are some risks that may be there, ensuring that the will, will not get lost or corrupted or whatnot. Can you give us a sense of what some of these risks might be?

**[19:20] RAPHAEL:** Yeah, so one is as a practicing estates practitioner, one of the questions I have to ask myself when a client is in front of me is does a client have capacity to make testamentary documents and sign a will? In electronic will context, who checks for capacity? So, that's one issue is like, does the client have capacity? You might say, if the client is on a computer typing and signing, then that's fine. The question is, I don't know if every platform has the ability to verify that it's the right person doing the documents. Is it the actual person and they are doing that out of their own freewill.

**[20:02]** One area of vulnerability that has come up a lot around an aging demographic is the issues around undue influence. So, undue influence is when somebody uses either relationship or coercion or their influence on a dependent person to say, "Hey, make a disposition to my benefit, because you need me, because you're scared of me, because I take care of you." A client that's not acting out of your own free and informed thought, can't make a testamentary disposition. On the context of electronic wills, how do you ensure that the client have capacity, two, act out of out of their own free and informed thoughts?

**[20:44]** And then the final piece comes back to the execution piece. What if I prepare everything but I don't execute it? What happens? Is that document now my final and fixed intentions? Or is it a draft that needs to be rethought and that I was going to come back and fix it I just didn't come around to it, was not my full and fixed intention. And that's really what comes up a lot in terms of at least the issues that I expect courts are going to see. And as an estate practitioner, if a lot of the files that I work on, if there's a dispute about whether it's final and fixed intention, sometimes I can be invited to give a deposition and show my files and highlight that a client, this was a fixed intention. Somehow something happened, we didn't get to signing it or the client didn't get to signing it. This came up in the pandemic a lot. So, there's a bunch of cases around the pandemic where lawyers are being asked, estate practitioners and are being asked, what is the nature of the document that you prepared?

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

**[21:49] HUSEIN:** One of the recent cases, is a case called Rempel Estate and Dudley, and the citation for people who are listening is 2020 BC IC 12/62. Can you tell us what the case was about?

**[22:02] RAPHAEL:** Canada Trust was appointed as an executor. And in BC, one of your obligations as an executor is to do a search for records in the BC Vital Statistics Agency to see if there is any will that exists out there. They did that search, nothing came back. As part of the affidavit that you file with your application for probate and those things, is you have to also say you've searched the places where the deceased would have normally kept documents and records to see and you didn't find any document. Well, Canada Trust went and did that search and then they found two thumb drives.

**[22:36]** One of it contained a document that basically said, "In the event of something happening to me, and having no other will, this is how I wish my estate to be handled." So, you find a document that says that, and then there's a list and a distribution of estate, but it's not signed, it's not done. It's not executed in a formal way, it doesn't meet the formality requirements.

**[22:57] HUSEIN:** So, what did the court find?

**[23:00] RAPHAEL:** Yeah, in this case, the court found that it was a will, and it used Section 58 of WESA, which is a curative provision in the legislation to say that the document's authentic, and that the core issue to be addressed in this case was met. And the core issue was whether the document represented the fixed and final thought and an irrevocable testamentary intention of that of the deceased at the material time when the document was prepared. And in that instance, the court found that yes, it was.

**[23:32]** And so that curative provision, in addition to that document and the title, allow the court to recognize the document as a valid will. To me, that is an example of the issues that courts are going to face in this era of online wills, electronic wills. And I think BC is charting the course for Canada in that sense, we're dealing with these issues first, because we've recognized it first, but it will show up and as we evolve to more technology-based planning.

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

**[24:06] HUSEIN:** A beneficiary designation is an important tool in retirement plan, because it determines who receives the money in the plan after the individual passes away. However, one of the liabilities in Canada is the question of whether an individual can delegate the beneficiary designation to another person and when that can be done. And many provinces are rethinking their approach to this issue and there may be some new developments coming very soon. So, Raphael, before we go into the changes, can you provide us with a bit more detail about what this concept is of a beneficiary designation.

**[24:40] RAPHAEL:** So, beneficiary designation is a document that allows me to name another individual who can receive, in a context of a registered plan, the proceeds of a Registered Retirement Savings Plan, an RRSP, a Registered Retirement Income Fund, a RRIF, tax free savings account. It allows me to name somebody that can receive the proceeds of those things on my death. And you can do that in multiple ways. One is, usually when you want to open the account, the bank will give you a form that says, name your beneficiary. Your name, Raphael Tachie, sign it and done. You can also do it in your will in some contexts where you name a beneficiary of a registered plan in your will.

**[25:26] HUSEIN:** I understand that there is some tension about whether designation is a creature of contract, and/or testamentary. Can you explain to us what this means?

**[25:37] RAPHAEL:** So, generally, a designation is a part of a contract, because when Raphael walks into the bank to go open an RRSP, I'm presented with a contract that says the bank is going to open this account for me, and really behind that, you will find that it's really your relationship is with a Trust Company, that bank is an agent of the Trust Company, and that I pay money to hold it in trust for me, and they invest it for me, and they will register the plan with the CRA for me, and they will do my tax reporting for me so that I can deduct my RRSP contributions. That's really a rough framework of what the registered plan looks like in terms of its mechanics.

**[26:15]** Now, the contract part comes in the fact that because the contractual basis is between me and an institution that is issuing me that product. And they promised me all these things. As part of the promise, they give me a right to name a beneficiary, either in your form or in a separate document or in my will. So, I got

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

a contractual right to name somebody to receive the money on my death. If it's the product of contract, I can name an agent to designate somebody for me. So, that's really where the big issue around contracts come out of.

**[26:47] HUSEIN:** So, that is the contract part of it?

**[26:50] RAPHAEL:** Yeah.

**[26:51] HUSEIN:** What do we mean by that being a testamentary product?

**[26:55] RAPHAEL:** Yes. So, a beneficiary designation, because it only takes effect on the death of the person that made it. So, if I named Husein as my beneficiary, you don't get access to my RRSP until I die. And the mere fact that the effect of that document is my death, like my death brings it into being makes it arguably testamentary disposition and courts have waffled between whether it's a contract or a testamentary disposition. Generally landing on the testamentary disposition side.

**[27:27] HUSEIN:** So, why does it matter whether it's a product of contract, or by testamentary?

**[27:33] RAPHAEL:** It matters, because I can as a product of contract, I can delegate it. So, I can delegate the authority to name a beneficiary to my agent, to say, hey, agent, name Husein. Now, let me give you a factual context of why that might happen. RRSPs when I think, age 60/70 converts in to RRIF. So, you go from RRSP that converts into a RRIF. But that's a case, Banting v Banting where the court says your designation on your RSP does not follow your RRIF. So, when your product changes its nature, the designation doesn't follow it.

**[28:09]** So, you might need to when your RRSP turns into a RRIF, I have to go back and name a new beneficiary. It might be the same person, but I have to do a new document. Now think about somebody that is capable, and mentally able to make a designation while they are young and have the RRSP. But by the time the product converts over automatically to a RRIF and an Income Tax Act, they're not mentally capable of making a designation anymore. That means my destination doesn't follow it. And if it's a product of contract and I have say an attorney, that attorney can go up and name a new designation or make a new one for me.

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

**[28:48]** That is the big fundamental issue because I can designate a product of contract to an agent to fulfill it for me. I cannot designate or give to an agent, my testamentary ability. And so if I can't name an agent to make a testamentary disposition for me, if a beneficiary designation is a testamentary document, I'm stuck when I'm incapable and my product converts over. That is the practical reality that exists around these things.

**[29:17] HUSEIN:** So, I know that there are some changes that are happening in different provinces. Can you outline a few of these recent changes for us?

**[29:26] RAPHAEL:** Yeah, I think in the last two to three years, there's been a sweeping change. So, BC again, started it and WESA BC permitted... It carved out, out of the definition of testamentary document or instrument beneficiary designations. So, it carved that out. And then it allowed an individual to permit an attorney to make a designation in some very prescriptive circumstances. So, one is the attorney can go to court and get a court order and then it can do any designation they want. But absent of a court order, an attorney could designate the same person that I designated while I was capable.

**[30:09]** So, in my example, I named you when I was capable, and then my RRSP turns into a RRIF, but I'm not capable anymore. My attorney under the BC act can go and name you, as my beneficiary on the RRIF. So, you close the gap that exists. Financial institutions for a long time are caught in the middle. So, they are caught because their client names somebody, then become incapable, their product converts automatically, and you're being forced to either not recognize a designation or move over designation in contrary to the law.

**[30:41]** And so that tension forced them to do a lot of advocacy work before provincial legislatures to say please fix it for us. It's a problem for ordinary Canadians. But it's also a problem for the financial institutions. So, you started to see BC adopt it, Alberta adopts it and then slowly all the provinces are starting to move towards BC direction. They've either introduced a bill to amend the law that impacts beneficiary designation. So, essentially adopt the BC approach, or they've already passed it. And some of them are in different states of the legislative processes. But most provinces outside of Ontario, are in the process of updating

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

their laws to reflect, to close that gap and to adopt that BC approach, which is a real narrow permission for an agent to make a designation.

**[31:32] HUSEIN:** What do you think this change will mean now for lawyers who practice in these jurisdictions?

**[31:37] RAPHAEL:** It means you want to encourage your clients to have documents that appoint an attorney. So, they have an agent. And in my documents, for example, I now state essentially the BC position, which says, my attorney may make a designation if a court approves it, or if it renews a product that I already had, on which I had already made a designation that's renewing. So, that I give my attorney the express power to do that. Because I think once the legislation permits this, then the question that financial institutions are going to ask is, does your document allow you to do it? Yes, you could do it by the act, but do you have the express power to do it?

**[32:17]** And so to me, that's what practitioners should be focused on, is one, if this is coming up in your province, and it's not off course in fact yet, pay attention to it. Two, if it's already enforced in effect, then I would say mirror that language in your document so that you give the express power to your attorney to do those things. And then you're going to educate your financial institutions because we catch up on a lot quicker than they will. And so to the fact that you have a client that's engaged in an institution around the changing designation, or renewing a RRIF or something like that, you might have to give an opinion or talk to that institution about the changes in your province.

**[33:03] HUSEIN:** We're going to wrap up with the latest installment of our Ask-Me-Anything segment with Raphael. As our members know, one of the bonus rewards for members of our Lawyered Patron community, is the opportunities to submit questions that they want to hear answered on the show. These questions are anything at all within reason, as long as they're not asking for legal advice. And we normally do a call for these questions about a week or so before the recording. So, if you want to learn about how you can become a patron and submit your own questions for upcoming guests, and as well as other rewards as well, you can check out our website which [www.lawyeredpodcast.com/patreon](http://www.lawyeredpodcast.com/patreon) for more info. Okay, so, Raphael, a question from our mailbag is, how do trends and diversity impacts the day-to-day work of wealth management law?

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

**[33:44] RAPHAEL:** I can say to my experience, and my experience has been that in black and immigrant communities, we don't always think of the intersectionality of culture and estate planning. And that there is cultural assumptions built in estate law. So, one of the things that I focus on is educating communities and immigrant communities about why you need to be intentional about your estate planning because the default provisions under intestacy rules, when you don't have a will, for example, presumes certain family relationship and family obligations and distributes assets in a way that you might not want.

**[34:19]** What do I mean by that? It means that if you have a broader concept of family other than a nuclear family, you have to be intentional about your estate plan. And you have to include that in your estate plan. In terms of wealth management, broadly, one is representation. I have had two coffees today where the conversation of black women in, say, portfolio manager roles don't exist. I know one person in Canada that does that kind of work. And so when talking about building wealth and building generational wealth in the black communities and in immigrant communities, if we're not in those spaces, and bring those knowledge back to our communities, we don't get to manage wealth, because we don't build those wealth in our communities, and wealth is generational.

**[35:03] HUSEIN:** And in terms of the first part of your response, talking about how there's different concepts of family and creating money. Are there things that you do in particular differently to develop this cultural competence to advise clients?

**[35:17] RAPHAEL:** Yeah, I learn about myself. And I am self-conscious about who I am and how that law impacts me. If I'm going to do this work, it's personal. What I love about estates is, I get to meet you Husein and ask you personal questions to get to know you. And so that means that I try to ask you questions about your family, but not just to your wife, and kids or your spouse and kids, but I asked you about your extended family, what's your relationship like? Do you have a connection to another place in the world? Are you an immigrant to Canada? Do you take care of anybody there? Do you have an obligation? Or a moral or legal obligation to provide for somebody there? And how does your estate plan talk to those things?

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

**[35:59]** So, increasingly, I do a lot of conversation around, how's your property registered? And what's your intention for it? Because lots of immigrant families aggregate income to purchase properties. So, that's how a lot of us get started. It doesn't mean we register those properties legally in the same way that we would, while we intend. So, we don't put all the kids on a property and they all pay mortgage, for example. So, I try to get to know my clients in that context more deeply than I think traditional estate planning practitioners do.

**[36:29] HUSEIN:** That makes a lot of sense. So, the next question we have is, what are the legal considerations for individuals who seek to pass along NFT's, which is Non-Fungible Tokens, through wills or through succession planning?

**[36:42] RAPHAEL:** One, your document has to talk about it. So, if you have a will that doesn't speak to digital electronic assets, that's something should consider. And one, if you have it, look at the definitions, does that include and capture things like digital currencies, NFTs, derivatives of digital currencies. I have had to update my precedence over that. Two is, a lot of these currencies are sometimes governed by smart contracts that automatically execute certain relationships. So, you to understand whether you have a contract that that operates that way, that might impact your gift of your cryptocurrency to somebody else or your electronic digital asset to somebody else.

**[37:25]** It is understanding why you own, educating a lawyer on what you own. And if there's a smart contract that impacts it, maybe your will never has an impact. But understanding that piece is important. And two, for a practitioner, updating my document to reflect, to capture the new and interesting digital assets that evolve and emerge. And so I'm always looking at my language, things around like now VR and building farms, web 3.0, and all these things. You kind of have to know the product that will come out of that, and can someone have an ability to give that away? And is my document thinking through those things?

**[38:08] HUSEIN:** Are there any things that you need to think about differently, when you're transferring an asset that's non-physical, like a digital asset?

**[38:16] RAPHAEL:** Yeah, the two key pieces is, is there a contract that governs it? Because say, if you're dealing with Facebook, that's a contract that exists between your client and Facebook and the ability to designate somebody to deal with



**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

those things for you. What rights do they have to deal with those digital assets? So, that's really the important piece? And then the other piece is understanding whether that asset is our value, is it monetarily or is it sentimental? Can I treat it more like a personal effect? Or do I need to treat it as if it is a cryptocurrency that actually could have millions of value?

**[38:53]** And again, understanding why those are. Unless a client broadly speaking, asset bases is based on that, and that's a critical piece, then we explore all of that, but just spend a lot of money doing that on a client's basis, it would have to mean something. Otherwise, I just kind of update my precedent language to capture those things and give the executor or the attorney, the ability to deal with them. But I don't go into detail unless a client says, "I have \$10 million of assets in those things," then that matters.

**[39:20] HUSEIN:** Right. Earlier in this episode, we're talking about some of the new Consumer Protection Frameworks that exist that banks can implement to protect consumers. The question is on the flip side of that, if you're the one who's advising consumers, are there things that you can do as a lawyer to best protect them from banks, practices or any other similar issues?

**[39:43] RAPHAEL:** Yeah, I do that for my individual clients. One is, if I'm acting for a client, I want to make sure the client is, first capable, not subject to undue influence and all those things. Then think if they are vulnerable in some way, what is the safeguards I need to put in place in that documents for them. And then when we're engaging banks on their behalf, it's really highlighting that vulnerability to the bank, so that they're on point, and now their obligations might kick in and trigger for them to pay attention.

**[40:19]** And so some of it is, if I have a client, that's had a head injury, and can still manage their property but just like they need help—what's called supportive decision making, for example, I want to put the bank on notice, I want to make sure to say, this client has this challenge. It doesn't mean they can't manage their finances. And unusual I work with a medical practitioner to scope out what they can and can't do, and put the bank on notice. Some banks will say, "No, we don't want the client" but a lot of banks will say yes, and then they'll find accommodation to help the client.

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

**[40:48] HUSEIN:** Excellent. The last question we have relates to a big part of your practice. There's a lot of practitioners out there, like non-lawyers who help with wealth management, as financial advisors. So, the question is, what role can lawyers specifically play in helping clients with business succession planning?

**[41:06] RAPHAEL:** Lawyers can play a critical role in business succession planning. For one, if the client shows up, and they don't have the full complement of their services they need? So, does the client have an insurance advisor that is advising on the shareholders agreement and the buy/sell provision? Can you help the client identify a resource to help them do that? Two, is an accountant involved in a secession planning that can do the tax structuring? Or do I need to bring in a tax partner, at least on my firm. So, I build a team for the client if the client doesn't have that team.

**[41:36]** And it's not that I'm saying do work with these people, it's saying you need these types of resources, if you don't have any, these other people, connect with them. So, that's one and then for that client, I'm acting as a quarterback, not only am I doing the drafting, but I'm helping the client really identify the resources they need to implement successful succession plan. Sometimes it's a function of family meetings, because it is a family business and really having conversation about the child that's involved, the child that's not, getting the client to really be honest with themselves about the capabilities of your kids, and whether they can work together.

**[42:11]** To me, what I love about my practice is that, in some ways I become the confident of my clients, I hear a lot of details about family and business partners that they wouldn't share. And I'm able to help them navigate the traps that they might fall into based on what they want you to do. To me, lawyers play a critical role.

**[42:32] HUSEIN:** Raphael, I wanted to thank you for taking the time to chat with me and our listeners about these important issues. The episode was about Wealth Management Law. I think that a lot of your answers in our discussions really changed the way that I think about wealth. It's not just about the dollars and cents, it is about your relationship with them and how you go about caring about your life and your business, in light of all this. I want to thank you very

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

much for taking time to walk us through these. And we look forward to staying in touch in the future.

**[42:57] RAPHAEL:** Thank you, Husein. Thank you for having me. I enjoyed it. Podcasting is new to me, but I'm glad I had the ability to work with you on this. Thank you.

**[43:06] HUSEIN:** You did great. Thanks.

**[43:08] RAPHAEL:** Awesome.

**[43:14] HUSEIN:** And that's a wrap on our episode for this week. Thanks for listening. On today's episode, our guests was Raphael Tachie. You can learn more about him and his work at his firm's website, which is [www.gowlingwlg.com](http://www.gowlingwlg.com). And for more about today's show and for links to all the cases and statutes that we spoke about on the episode you can find those on our website, which is [www.lawyeredpodcast.com](http://www.lawyeredpodcast.com).

**[43:40]** And on our next episode, we're going to be speaking about the area of indigenous law with our guest, Jeffrey Nichols. Jeff is a fantastic lawyer. In addition to having ties to indigenous work, both culturally and professionally, Jeff is also the president of a nonprofit that provides financial resources to assist First Nations and exercising their legal rights in court.

**[44:00]** It is going to be a very insightful conversation. We've got a bunch of topics including issues related to indigenous rights in the Charter. We're going to speak about an ongoing lawsuit involving mineral and land rights, and also a positive trend in the area of temporary reconciliation agreement. So, keep an eye for that one in a couple of weeks. And if you want help to improve the show and it's unique affordable legal awards, including the opportunity to be part of our Ask-Me-Anything segments by submitting your own questions. I'd be very grateful if you could take some time to check out our crowdfunding website and become a patreon of our show.

**[44:33]** Just a couple of dollars a month really goes a long way to improving the quality of this production and making more accessible for more people. You can find more about that on our crowdfunding website, which is

**Lawyered – Episode 81**  
**Wealth Management Law (ft. Raphael Tachie)**

[www.lawyeredpodcast.com/patreon](http://www.lawyeredpodcast.com/patreon). Again, that's [www.lawyeredpodcast.com/patreon](http://www.lawyeredpodcast.com/patreon). And we'll give a shout out to a bunch of our patrons, both past and present including Abbas Kassam, Andrew Monkhouse, Brian Osler and Candace Cooper. Thanks so much for being so supportive of this show for quite a while and we really appreciate what you're doing to keep this show on the air.

**[45:07]** And if you want to make sure that you never miss an episode of lawyered, subscribe to this podcast, it is free on iTunes, or your favorite podcast app. And as always, you can follow the show on Facebook, LinkedIn or on Twitter. And our Twitter handle is @lawyeredpodcasts. As always, our sound editing work is managed by Solomon Krause-Imlach, our theme was provided by Ben Swirsky and our website is maintained by Steve DeMello. And finally, please be advised that while the show was aimed to be helpful and informative, that is not legal advice. However, if you want legal advice, please reach out to us directly to help you with your particular situation. And with that, we will see you back here in two weeks. Until then, keep it legal.