YOUR CATHOLIC LEGACY

From the Development Office of the Archdiocese of Toronto

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Following the Lead of Love

BY ARTHUR PETERS

I am blessed to have been born to parents that considered it important to give back to their community and church. From a young age, I watched my mother and father volunteer at our parish to help raise funds to build what is now St. Anthony of Padua church in Brampton. I can remember the STP (Save Those Pennies!) cans, volunteering at the CHIN picnic on Toronto Island, and the parish dances where my father was the head of the Parish Social Committee. My parents were involved with the Knights of Columbus and the Catholic Women's League, which led to the founding of the Knights Table restaurant, now a prominent social service organization in the City of Brampton – it all started with a man taking his daughter for ice cream on a hot summer night! So many memories!

As I turned older, I followed my parents' lead in helping others. I have worked in the non-profit sector for 24 years, and in my current role with the ShareLife office I am fortunate to be able to help the many organizations that benefit from our generosity. I have often said that if one wonders why we have such an appeal, all they would have to do is visit one of the ShareLife-funded agencies. I have left each visit even more inspired to spread the good news of their work and consider my role as more of a vocation than a job.

Almost four years ago, I married Angie, the love of my life, and soon after we decided to draw up our Wills, which I had never done before. As I don't have any children, I wanted to ensure that charities would benefit from the proceeds of my estate, and my wife felt the same.

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Things Often Forgotten in an Estate Plan

BY RHONDA SOGREN

Remember those items of sentimental value!

People often overlook items of sentimental value during estate planning, and this oversight can lead to disagreements and relationship-ending issues. Instead, you should consider providing direction for property of high emotional value and provide clear instructions on how it is to be distributed.

When Roberto Goodman passed away in 2018, an unfortunate battle broke out between Roberto's wife and his children from previous marriages. The center of the dispute wasn't about money but rather over his gold cufflinks that had been worn at his wedding and other special occasions. Despite the existence of a detailed will, the cufflinks and other personal property with sentimental value were not explicitly addressed.

The story of Roberto Goodman's estate is not unusual. Although often overlooked during estate planning, personal property is a frequent cause of disputes. These fights can be long-lasting and end up tearing families apart. It may be helpful to sit down with your loved ones and discuss how you are planning to distribute your personal property. Often you may be unaware of the value that family members attach to specific items; jewelry, antiques, clothing, furniture and various collections, are valuable pieces because of the memories attached to them.

So you have hidden a couple things…

If you have hidden things, you may want to let a loved one know or even your Estate Trustee. While landscaping the family's yard, my family and I came across various pieces of gold jewelry: it turns out that our aunt who had passed away a year before, buried them under a mango tree! We would not have known otherwise. So if you plan to do any "special" gardening, you may want to inform someone.

Including burial and funeral wishes in your estate plan

Your final arrangements go beyond what you want to happen to your property. You should also include what type of funeral arrangements you want and what should happen to your remains after you are gone. Pre-planning your final wishes is a great way to offer additional peace of mind for your loved ones during what will already be a stressful and emotional time.

One of the best ways to let your loved ones know about your funeral wishes is to write down a list of specific instructions which is separate from your will. Consider the following:

- Arrangements regarding a funeral Mass
- Songs/hymns to be sung
- Where the service should be held
- Whether you want to be cremated or buried
- If you have money put aside to pay for your final expenses and where it is
- Even, what you would like to be wearing for your burial/cremation
- The designation of in-lieu of flowers gifts

Once you've made a plan, one of the most important things you can do is communicate your wishes to your loved ones. How else would they know?

Will Laws: Three Recent Changes, Simply Explained

BY ERIC J. BUNDGARD

Most people in Ontario have a generalized familiarity with the concept of a Last Will and Testament (or "Will", for short). This awareness is acquired perhaps most often in the context of either themselves or a close family member having had a Will. At its fundamental core, a Will is a legal document, signed by a person referred to as the testator. It takes effect after the testator's death. If legally valid, an appropriately constructed Will can provide a framework for the orderly administration of the assets of the deceased's estate and for the distribution of estate property to the testator's preferred heirs. In contrast, if a deceased's Will is determined to be invalid, or if the deceased died without a Will, the laws respecting intestate succession govern the administration and distribution of the deceased's estate. In the result, unintended consequences can occur: persons other than those favoured by the deceased could inherit from the estate.

Wills are an ancient, well-established feature on the legal landscape. Over time, both judge-made law (known as common law) and statutory law (made by the legislature) have developed legal tools for the application and interpretation of Wills, and for the determination of their validity. Societal changes however drive policy changes, which in turn can impact the evolution of laws overall. Wills are not isolated from such forces.

Last year opened with a number of significant developments in Ontario laws governing Wills, with amending legislation effective January 1, 2022. Some of these changes are of general application; others have specific application to legally-married spouses. All may impact profoundly existing estate planning regimes in unanticipated ways unless they are taken into account.

1. Relaxation of the rules of "strict compliance"

A longstanding regime of "strict compliance", under a set of formalized requirements codified by statutory law, has governed the validity of Wills at the time when executed or made. By example, unless a printed Will was signed by the testator in the presence of two independent witnesses, or if it was modified later by the testator without the required formalities of execution being met – in all likelihood the Will would be held as invalid, if challenged or submitted for probate. With the recent legislative amendments, a reviewing judge of the Ontario Superior Court of Justice now is empowered to exercise discretion to validate what otherwise would have been an invalid Will for failure to abide by the strict formalities of making and executing a Will. Now, if a judge is satisfied that a document or writing, that was not properly executed or made, sets out the testamentary intentions of the deceased or an intention of the deceased to revoke, alter or revive a Will of the deceased, the judge may accept the document as a valid and fully effective Will.

Notwithstanding this potential easing of the harsh repercussions of failing to abide by the rules of strict compliance, testators are cautioned not to test the limits of judges' acts of discretion to save their estate plan from failure.

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To best promote the chances of a successful implementation of an estate plan, sound advice is to ensure that a Will is validly made and executed properly, with all the customary formalities being scrupulously honoured from the outset.

2. Marriage no longer automatically revokes a Will

Formerly, the pre-existing Will of a person generally was deemed revoked at law upon that person's subsequent marriage. The legislative objective supporting this automatic revocation presumably was grounded in a desire to protect the interests of a surviving spouse where the testator failed (likely forgot) to make a fresh Will to account for their changed family circumstances: with the Will revoked, the surviving spouse at least stood to receive some estate property under the laws governing intestate succession.

Commencing this year, the act of marriage no longer automatically revokes a prior Will.

The motivation for this change appears directed toward addressing an unfortunate phenomenon occurring within our society: the need to protect the heirs of vulnerable persons, oftentimes the elderly, from so-called "predatory marriages". In this context, the "predatory" spouse is one who unscrupulously marries a vulnerable person with the principal objective of achieving personal financial gain through the laws of intestate succession, when that vulnerable person expectedly dies before they do. With the legal revision, the perhaps unintentional (in the mind of the vulnerable person) revocation of a prior Will by the marriage is avoided. Thus, equally reduced are the prospects for the inadvertent and presumably unpalatable consequences in which preferred heirs might receive ultimately a greatly reduced estate distribution: their rights of inheritance in the pre-existing Will are now preserved.

Now, newlyweds of whatever age, who have pre-existing Wills, actively should consider whether any updates to their respective Wills may be warranted as a result of their marriage, if they wish to provide adequately for their surviving spouse upon death.

Whether this legislative revision will be advantageous or detrimental to the interests of the greater number of couples remains to be determined.

3. Separated spouses now may be treated more like divorced spouses

The legal termination of a marriage, either by divorce or declaration of nullity, can have significant ramifications regarding Wills. If a testator, being a former spouse, had a Will which pre-dates the marriage termination but which remained unchanged at the time of that testator's death, current statutory law provides generally that the former spouse of the deceased automatically loses the benefits and entitlements provided to that former spouse in the deceased's pre-existing Will. The surviving former spouse generally is deemed to have predeceased the testator and to have lost any rights to inherit gifts of property from the deceased's estate or to an appointment as executor of the deceased's Will.

The objective of this current law presumably is to protect against the surviving divorced spouse from inadvertently inheriting from the estate of the deceased former spouse.

Otherwise, divorce by itself does not revoke a prior Will. Neither does the legal separation of spouses.

The law, affecting the rights and entitlements of divorced spouses only, formerly did not apply whatsoever to separated spouses. It did not apply to those spouses who may have been separated for longstanding periods, even decades – but who had failed, for whatever reason, to finalize their divorce or to update their estate plans with a fresh Will following their separation. This sometimes led to seemingly harsh and unintended consequences for the natural heirs of deceased, separated spouses. An effective "ex-spouse" still could benefit handsomely, to the detriment of the deceased's truly preferred heirs, from the gifts bestowed under a deceased's historic but still-valid Will. Such a Will perhaps was executed when the marriage was fully intact, by which the since-separated spouse may have been named as the principal beneficiary, but which the deceased neglected through inadvertence to revoke by making a fresh Will to reflect their changed marital relationship by naming other heirs.

With the recent legislative changes, separated spouses now will be treated more like divorced spouses respecting their Wills. A caveat though is that not all separated spouses will meet the new criteria set forth in the legislation and thus be able to benefit by the protective revision: many may not qualify. Separated spouses are cautioned to seek legal advice in this regard and to revise their own estate plan accordingly to protect their and their preferred heirs' interests.

Eric J. Bundgard is a lawyer practising in estate planning and estate litigation with the Toronto-based law firm of Evenson Bundgard LLP. *The information contained in this article is for general education on matters of interest only and is not intended to be relied upon as legal or financial advice for any specific purpose. For specific guidance and advice, readers are encouraged to consult their own legal and financial advisers.*

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This is an important part of our legacy, to be able to continue to support others after we have returned to our Lord.

The two primary charitable beneficiaries of my estate plan are ShareLife and my parish. It was important to me to have these two entities included, as I wanted to support the Legacy for Life Fund of ShareLife, and the work of my parish. In addition, I also listed a small number of secular charities that have been important to me during my lifetime (such as the Knights Table). I am comforted knowing that there will be people who will benefit from a legacy gift through my Will.

According to a 2019 Canadian Financial Capability Survey, 55% of Canadians have an up to date will, but this varies by age – 95% of those over 65 have a Will in place, while only 22% of those under 35 have developed their estate plan. None of us know the day when we will be called home by God, and as such it is important for a number of reasons that we have a plan in place to ensure that those who survive us will know and act on our intentions.

When developing this plan, consider inclusion a charitable beneficiary, including your parish or an archdiocesan related organization (ShareLife, The Shepherds' Trust, etc.). This will recognize that value that you have placed on your faith during your lifetime and help support the work of the church for the future.

As is noted in 1 Chronicles 29:14: "For all things come from Thee, and from Thine own have we given thee." When we include a legacy gift in our estate plan, we are doing more than leaving a charitable gift – we are living the Gospel values that we have held dear to us while on earth.

The Development Office of the Archdiocese of Toronto can provide a list of Catholic Advisors should you require one. Please contact us for further information.

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JOIN THE *Legacy Society*

If you have included your parish or favourite archdiocesan charity in your Will or estate plan, please let us know. Through the Legacy Society of the Archdiocese of Toronto, we would like to say a special thank you.

All Legacy Society members are invited to the Annual Legacy Society Lunch and Mass by the Archdiocese of Toronto. They will also receive:

- **A hand-crafted cross, blessed by His Eminence Cardinal Thomas Collins.**
- **A personal letter from Cardinal Collins and a certificate acknowledging your intention.**
- **Invitations to Legacy Society functions and other special events.**

Let your legacy be a testament of your faith! To learn more about the Legacy Society, please contact the Development Office.

All calls are confidential. All Legacy Society members have the option of remaining anonymous.

***Your Catholic Legacy*, the planned giving newsletter of the Archdiocese of Toronto, is a free publication to keep parishioners informed about issues related to estate planning and the many tax-smart and creative ways they can support their parishes and Archdiocesan charities. While all articles are researched and come from reliable sources, you should always consult your own advisors before making a gift.**