

A Look at Recent Changes to Ontario Estate Law

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If making changes to your estate plan is on your “to-do list,” it is important to be aware of several amendments that were introduced as of January 1, 2022 to estate legislation in Ontario. The Ontario government recently passed the *Accelerating Access to Justice Act* (“Bill 245”) which includes changes to the way Wills are interpreted and how your Will can now survive you after saying “I Do” at the altar.

This article explains how recent changes to Ontario estate law may impact estate plans and provides tips on how to protect your estate in Ontario according to Bill 245.

Marriage no longer invalidates a Will

As of January 1, 2022, marriage will no longer invalidate a Will in Ontario. This is a significant shift within estates law. This shift is an attempt by the provincial government to avoid people being lured into “predatory marriages,” where a deceitful person will court and attempt to marry an unsuspecting party that has significant assets, thereby invalidating their previous Will and leaving the new spouse as a major beneficiary of the estate. This will result in a notable change in strategy as Wills should now be drafted with greater consideration given not only to potential future children but a potential future spouse as well.

Separation eliminates property rights

Under the new legislation, a former spouse will no longer have property rights even if you are not legally divorced. Separation will be treated as if you are divorced. Under the new rule, you are considered separated if you have been living apart for three years, have a valid separation agreement, or a court ordered separation agreement.

Gifts to a separated spouse in a Will, any appointment of a separated spouse as an executor under a Will, and the right of a separated spouse to inherit on an intestacy (dying without a Will) are all revoked. These rules already applied to divorced spouses but not to separated spouses.

Courts can save invalid Wills

Wills are the cornerstone of every estate plan. As such, there are specific rules concerning how they must be written and signed. This has historically been a challenge when a Will is discovered that appears to express the deceased person’s wishes but was not technically properly executed.

Ontario had been one of the last provinces to follow the rules of “strict compliance.” In other words, if a Will was not perfectly executed, and did not follow every single rule, the courts would rule it invalid. This could have a significant negative impact on the distribution of one’s estate assets.

The recent change in legislation is a positive one and brings Ontario in line with most other provinces in following the rules of “substantial compliance.” This ensures that Wills that failed on a technicality, but were clearly intended to be valid, can now be interpreted as such by the courts.

How to protect your estate in Ontario with Bill 245

1. **Create a Will** – don’t let the provincial intestacy rules govern how your wealth and assets will be divided among your loved ones. Having a Will prepared allows you to control who will get what, when and how much.
2. **Keep your Will updated** – changes in your life such as the death of a beneficiary, birth of a child, the purchase or sale of a business, or a divorce, separation and marriage are all reasons to review and update your Will.
3. **Ensure that your Will is valid** – this means that your Will is signed and witnessed according to Ontario legislation. Meeting with a qualified estate planning lawyer will give you peace of mind that you are putting a valid Will in place which will be recognized by the courts.

It is important to get estate planning and family law advice at any major life event stage. With the recent estate law changes in Ontario, spouses or former spouses should seek out the expertise of their family and/or estate planning lawyers to ensure that their Will reflects their most current wishes.

To learn more about the latest Ontario estate law changes and how they may impact your estate plan, you should consult with your family and/or estate planning lawyer.

For more information, please speak with your BMO financial professional.



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