

Estate lists under pressure of 'archaic laws'

As every lawyer practicing in the courts at any level knows, while judiciary decisions provide the occasional update to applications of the law, there's no substitute for going back to the root of the legislation to clean out the cobwebs and bring things into modern-day context.

For example, family law hasn't kept pace with the way it is being played out in the courts, with more and more self-litigants who are jamming the dockets and slowing the process to a crawl.

Over on the wills and estates lists, things aren't exactly rocketing along either. Combine an aging population with larger estates — often just the value of the homes in the GTA involved alone is enough to push them over \$1 million — and increasingly combative parties and it's another recipe for trouble.

A BMO study last year found the average inheritance in Canada is just less than \$100,000, with 55 per cent saying they have received an inheritance and 63 per cent expecting one.

All told, says BMO, some \$1 trillion is expected to change hands between generations over the next 20 years.

Estate wars, of course, are nothing new, but recently, the *Toronto Star* ran a series of stories highlighting some of the inherent issues stemming from legislation that hasn't been reformed in years

and is clearly behind the times.

The stories highlight a key issue, that of predatory marriage. It's when a person inserts themselves into a vulnerable senior's life, offering care and companionship, and then takes advantage of their declining memory and capacity to manipulate them into marriage, often promising to care for them at home for the rest of their life.

Once married, however, the "spouse" is entitled to the estate because in Ontario marriage voids a will. And then the fighting starts.

"We've had this problem for 15 years, but the government won't engage in meaningful legislative review," says estates practitioner Ian Hull, of Hull and Hull LLP. "Both B.C. and Alberta changed their rules so that a will isn't negated on marriage."

The root cause is Ontario's "archaic estate laws," as Hull puts it, and a singular lack of urgency on the part of government in pursuing reform. Indeed, as estate lawyer Charles Ticker also points out, it's easier to get a marriage licence than a driver's licence in Ontario and it makes elderly people vulnerable to predators chasing their estates, and it prob-

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ably calls for a capacity test for those over 80 before marriage, Ticker argues.

Ticker, who has been practicing for 35 years and specializes in estate litigation, mediation, and estate administration, says that while the Ontario Marriage Act notes intoxicants such as booze or drugs are a bar to marriage, dementia isn't specified.

"You have to be interviewed once a year for your driver's licence in Ontario; why wouldn't we consider a similar test or at least a letter from your doctor?" he said. The Family Law Act, R.S.O. 1990 and the Succession Law Reform Act, R.S.O. 1990 provide other remedies for the surviving spouse, said Ticker, which bring into question why revocation on marriage is still on the books.

Of course, simply striking down that section of legislation would be the simplest course of action, given the consensus of opinions both in Ontario and across Canada.

When it comes to action by the government of the day, however, it remains the squeaky wheel that gets the review.

Predatory marriages are but one issue in estates. There are a few others that could use a streamlined process.

Last fall, the Law Commission of Ontario's "Simplified Procedures for Small Estates" suggested a separate and faster process for estates less than \$50,000. It envisaged legal support in line with that level of asset, much like some proponents have argued that the Family Law Act could use a process where the matrimonial assets are so sparse inviting legal combat would deplete them completely and still not resolve most of the issues.

The LCO also recommended an education campaign on the importance of wills and the issues that can arise. Hull was a contributor to the report and points to two others. One is "Legal Capacity, Decision-making and Guardianship," the interim report released last year. Submissions wrapped up March 4 and the final report is due this year. The other report is "Persons with Disabilities: Final Report — September 2012."

Perhaps if this government had to spend less time putting out the fires it started, it would have more time to show leadership in the administration of the law — being wasted in the administration of justice at the courts.

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