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Issues in Law You Need To Know

Common Law Spouses and Intestacy - The Misconceptions

Many common law spouses believe that because they have been living together, they are considered married in the eyes of the law and consequently, if one common law spouse dies intestate (without a Will), the surviving one common law spouse is entitled to receive part of or the entire Estate. This is not the case.



The Succession Law Reform Act (the "SLRA") states that if one dies without a will, married spouses are entitled to a preferential share of the estate equal to \$200,000 plus 1/2 of the balance to share with the deceased child or 1/3 of the balance to share with the deceased's children.

However, common law relationships of heterosexual or same sex partners, lack the same recognition as married spouses under the SLRA leaving the surviving common law spouse with no statutory right to an inheritance from their spouse's Estate.

That means if a common law spouse dies without a will, the surviving common law spouse has no entitlement to any part of the Estate.

For example consider Jack and Jill who have decided never to marry but have been living together for 15 years and have three children aged 12, 9 and 7. Unfortunately, Jack dies in a car accident leaving an estate valued at \$300,000. Jack has no Will.

Because Jack and Jill were never married, Jill has no legal right to an inheritance or to property through

an equalization payment and Jack's estate will be divided equally among his three children where each would inherit \$100,000 (held in trust until they have reached the age of majority).

As a common law spouse, Jill can only hope to succeed in an action where she would sue the Estate seeking support as a dependent.

The above example may seem unfair but the Supreme Court of Canada in Walsh v. Bona, held that such distinction does not offend the Canadian Charter of Rights and

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Freedoms because the differentiation was based on the individuals' choice of whether or not to marry.

Common law spouses who want their spouse to have a right to an inheritance in their Estate must have

a valid Will. If you or someone you know is in a common law relationship and does not have a Will, to avoid a situation such as this, it is time to consider getting one.

If you have questions regarding

this issue or any other issue pertaining to Wills and Estates Planning, please contact:

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EDUCATIONAL BACKGROUND

- University of Ottawa, LL.L., 2007
- University of Ottawa, LL.B., 2005
- Michigan State University, College of Law, J.D., 2005

PRACTICE SUMMARY:

Sébastien joined Tierney Stauffer LLP as an Associate in the Wills, Estates & Trusts Planning & Administrative Practice Group in 2009. His practise focuses on estate planning, will drafting and personal and corporate taxation. Sébastien has experience in resolving disputes with the Canada Revenue Agency (CRA), filing voluntary disclosures, assisting individuals with their tax related issues and tax planning for families and businesses. Sébastien is bilingual and practices in both official languages.

He has spoken at various seminars on estate, trust and tax matters. Sébastien has also appeared on radio and television discussing legal issues. He is a tutor for the Law Society of Upper Canada for the Estate Practice section.

Prior to joining Tierney Stauffer LLP, Sébastien practiced with another Ottawa law firm where he gained experience in tax law, charity law, estate planning and will drafting.



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