When the relationship ends, watch…!

by Jack Micner, Spry Hawkins Micner

In B.C., a child (biological or adopted) and a spouse (married, or "common law" for 2 years) are eligible to seek variation of their deceased parents' or spouse's Wills. If they feel that they were not left a **just fair and equitable** portion of the Estate in the Will, they are eligible to pursue their legal rights.

The legislation (now the *Wills Estates and Succession Act*) has actually been in existence since 1920. With the extreme rise in property values in part of B.C., Estates have grown in value also. There are now, I suspect, more cases in litigation than ever before.

The case

Reasons for judgment in the most recent Wills variation case were released in early April, in a case called Heathfield v. St. Jacques. In this case, the deceased died suddenly at age 53. He had for some years been beyond the end of his common law relationship. He had two children, both minors at the time he died. They were in the custody of the former spouse.

The deceased made a Will, in 2004, leaving his Estate to the former spouse. Though their relationship ended around 2006, the deceased never examined his Will to change it. He died in November, 2011.

Other litigation

The surviving spouse launched matrimonial action after the separation. The two parties agreed in 2008 to various terms including child support and an asset exchange. It was discovered later on that the deceased made some handwritten alterations to his Will, which stated his desire to have his Estate pass only to his children. The surviving spouse, meanwhile, entered a new relationship and made a new Will. In 2010 the former spouses agreed to a fresh Court Order which reduced his spousal support obligation as well as the contributions to the nanny costs.

Wills Variation

When the deceased passed, his business partner found the original (four page) Will, with the extra handwriting. The handwriting emphasized that the deceased did not want his former spouse to receive any of the Estate. Once the Will was reviewed by all parties, including the Public Guardian & Trustee (as the children are minors), the PGT decided to launch action on behalf of the children to vary the Will. The children were not named in the Will. The Court noted that the former spouse received $800,000 as beneficiary of an Insurance policy the deceased had, but also failed to change after the separation.

The Court examined some significant case authority and carefully considered the fact of the children being disinherited in the Will. In Wills variation cases, the Court must consider first whether the deceased owed any legal duties to his children. In this case, as they are both minors, the deceased did owe legal duties to them. On the other hand, the deceased was deemed to owe no legal nor moral duties to his former spouse.

Interestingly, the Court held that the handwriting (known as “interlineations”) was not “part of the Will” but the Court considered them as being reflective of the deceased’s true intention with respect to his Estate distribution.

The Court did not have much hesitation concluding that the Will did not adequately provide for his children. The Court varied the Will, removing the entire Estate into two trusts, for each of the two children.

Summary

The significance of this case is at least twofold. First, the end of a relationship should bring an immediate review of the couples’ Wills (and any agreements they may have made) to make necessary changes. Second, the wills variation remedy is a very significant one for minor children. Though it was useful that the deceased here wrote some information on his Will expressing that he wanted his children to receive his Estate, he really should have given consideration to how to look after his children (over and above the matrimonial actions he was involved in).