



WILLS

Matter

FULTON & COMPANY LLP

— celebrates 125 years —

DON'T WAIT UNTIL IT'S TOO LATE

At a certain point in life, whether it be due to illness or age, our capacities may diminish to a level where we are no longer legally capable of making Wills, power of attorneys or gifts.

There are different legal tests to determine whether a person is capable of making a Will, power of attorney and a gift. Each test has its own subtleties and should be examined closely if capacity is in question.

Testamentary capacity, or the capacity required to make a Will, is examined by determining whether the testator understood what he or she was doing and the effects of those acts. If capacity is challenged, factors that a court would consider are the testator's knowledge of the assets, knowledge of the value of the assets, and consideration of who may have a lawful or moral claim to the assets (i.e. spouse or child). If you lose your capacity in this sense and have not made a Will, there is little you can do to control the disposition of your property upon your death.

The test for capacity required to grant a power of attorney differs somewhat from the test for testamentary capacity. To begin with, the donor, or the person giving the power of attorney, must not be suffering from a mental infirmity when granting the power. Following this, the donor should understand that the attorney will have the power to do anything with the donor's property that the donor could do. If you are unable to manage your own financial affairs, it is likely already too late to grant a power of attorney.

The capacity required to make a successful gift can change depending on the size of the gift. The test for a small gift is similar to that required to make a contract, while with a large gift, the giver must have a capacity that is similar to that required to make a Will.

It is important to plan your estate while you still have capacity because it can be an expensive and prolonged process to manage property once capacity has diminished. In a separate Wills Matter columns we have discussed the events/expenses that can occur if you have lost legal capacity and have not made a Will, power of attorney or gift.

Contact Fulton & Company's Wills & Estates Team

if you have any questions regarding wills or estate matters.

To view past articles, visit our web site.



BY DONALD KNAPP



BY DANIEL CARROLL



BY LEAH CARD



est. 1885

FULTON & COMPANY_{LLP}

LAWYERS & TRADE-MARK AGENTS

WILLS & ESTATES LAWYERS

DONALD KNAPP	LEAH CARD
DENNIS HORI	EDWIN MARK
RICK HENEY	DAN CARROLL



300 - 350 Lansdowne Street, Kamloops, BC Phone: 250-372-5542 Fax: 250-851-2300

*This article has been provided by Fulton & Company LLP for informational purposes only and is not to be relied upon as legal advice. For legal advice on specific cases, please contact Fulton & Company LLP.

www.fultonco.com