



WILLS

Matter

FULTON & COMPANY LLP

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I LEAVE IT ALL TO MY MOTHER-IN-LAW — WAIT, NO I DON'T!!!

Many Canadians do not have a Will. If you are one of these Canadians you should be aware of how your property will pass on your death. Parents with children should also consider the guardianship and care of their children, an issue that Wills Matter has covered in a separate column. This column addresses couples without children.

Spouses (married or unmarried) without children may believe they do not need a Will because upon their death their assets will automatically pass to their spouse. But, what if both spouses pass away at the same time?

Take the example of a couple who pass away in a car accident in circumstances where it is impossible to determine which spouse died first. (We are assuming the couple have no children.) There are two legal rules that apply here. Firstly, the Survivorship and Presumption of Death Act presumes that the oldest spouse passed away first. Secondly, when a person dies without a Will, their property passes to their 'heirs-at-law', who are determined by the Estate Administration Act.

So, if the wife was older than her husband, she would be presumed to have died first. Her estate would pass to her husband, and because he didn't have a Will his estate (and hers) would pass to his parents.

The wife inadvertently gave her entire estate to her parents-in-law! The wife's family has been left out of the estate, and the property that her parents had passed down to her to keep in the family (including the hope-chest and the family cabin) is now being enjoyed by the in-laws. This is not exactly what the couple had in mind, but it all came about because they didn't have Wills.

This is a prime example why everyone, even those people with no children, needs a Will. If you do not have a Will and are concerned about your assets, see an experienced Wills and Estates lawyer who can assist you to avoid unintended consequences such as these.

Contact *Fulton & Company's Wills & Estates Team*

if you have any questions regarding wills or estate matters.

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