



WILLS

Matter

ARE YOU OUT OF YOUR MIND!?

In British Columbia, in order for a person to make a valid Will, that person must have a certain basic level of mental ability at the time the Will is made. This, in law, is called "testamentary capacity".

The law sets four requirements to be met before a person has testamentary capacity. A person must:

- (1) understand the nature of the business in which he or she is engaged;
- (2) recall the property he or she means to dispose of in the Will;
- (3) recall the people to whom he or she wishes to give his or her property; and
- (4) know how his or her property is to be distributed between those people.

If a person makes a Will when he or she does not have testamentary capacity, that Will is not legally valid. So, the consequences can be serious if proper steps are not taken to make sure that a person making a Will has testamentary capacity.

Lack of testamentary capacity is often used as an argument by persons who wish to attack a Will.

It is not always easy to determine testamentary capacity. When you use a lawyer in the preparation of your Will, that lawyer is trained to look for and assess testamentary capacity. Your lawyer may even request an opinion from a doctor if there is a question as to a person's testamentary capacity, just to make sure.

It is important to choose an experienced lawyer when making your Will to make sure that the proper procedures are followed and there is good evidence that you had testamentary capacity when your Will was made.

If you think that your loved one did not have testamentary capacity when his or her Will was made, you can seek to challenge the Will on that basis and an experienced estate litigation lawyer can assist you in determining the strength of your case.

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 LYLE BACKMAN, Q.C.



BY DANIEL CARROLL



WILLS & ESTATES LAWYERS

DON KNAPP	LYLE BACKMAN, Q.C.
DENNIS HORI	NICK WEISER
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