

# CASE IN POINT

Sales Tax Estate Planning Underwriting & Product Newsletter

## Ontario's Accelerating Access to Justice Act—Impact on estate planning and marital status

### PART 1 — The Impact of Marriage on a Will



With the passage of Bill 245, the Accelerating Access to Justice Act, 2021, has ushered in a number of amendments to Ontario's estate laws, which took effect in 2022. This is part one of a two-part series that will consider the impact of the old vs. new and current new legislation on marital relationships and follow Luisa and Fernando, through various stages of their relationship and estate planning.

Prior to 2022, under the former law, section 16 of the Succession Law Reform Act (SLRA), marriage automatically revoked a Will, except in limited circumstances. Generally, this meant that if a person in Ontario made a Will and subsequently got married, the effect of the marriage was to cancel the Will. If the married person died without making a new Will after getting married, their estate would be distributed as if they died without a Will. The surviving legally married spouse would be entitled to a "preferential share" of the estate; the amount of which was increased in Ontario, effective March 1, 2021, from \$200,000.00 to \$350,000.00. The surviving spouse would also be entitled to an additional one-half or one-third share of the estate depending on the number of surviving children, grandchildren or other lineal descendants (also known as "issue").



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Peter works with independent advisors and other professionals raising awareness on issues and concerns faced by affluent individuals, professionals and business owners. He supports efforts in researching and developing optimal solutions for clients aimed at improving their financial well-being and supporting their personal wishes and lifestyles. He has provided 1000s of workshops, seminars and technical support throughout the country on tax, retirement income and estate planning issues, concepts and strategies to both advisors and consumers. As an accredited Registered Financial Gerontologist, a good deal of his time is spent on building awareness and educating people of all professions who work with or specialize in the needs, expectations and issues of elders. Comprehensive lifestyle planning is an important element of these processes.

The Sales, Tax, Estate Planning, Underwriting & Product (STEPUP) team provides internal and broker support, including seminars, education, advanced concept illustrations & Client case technical consultations.

# Case in Point

One of the challenges with marriage revoking a Will is its potential impact on the vulnerable who unknowingly marry into a predatory marriage. Additionally, if such persons have children from previous marriages/relationships, this rule may result in disinheriting a child/children or significantly reducing their estate entitlement, when that may not be what the parent intended.

## Let's consider the following scenario:

Luisa and Fernando met in the summer of 2021 through a telephone dating service. Luisa is 77 and had significantly more wealth than Fernando. She also had three adult children from a previous marriage, with whom she was close. In Luisa's Will, her children were named as the beneficiaries (in equal shares) of her entire estate, valued at \$3,000,000 million (net value). Luisa communicated over the years that she was lonely, and her children were concerned because she started to show early signs of dementia. Fernando is 50. He has never been married and has no children. Fernando proposed to Luisa and she agreed to marry him. Luisa's children opposed the marriage because they were concerned about Fernando's motives.

Luisa and Fernando got married, despite the objections of her children. Luisa did not make any changes to her Will after the wedding. About one month later, Luisa had a serious slip and fall accident at home. She was hospitalized but had difficulty recovering from her injuries. Luisa passed away after a few weeks in the hospital.

Under the former legislation (SLRA), If Fernando and Luisa got married in 2021 and Luisa passed away that same year, Luisa's Will would be revoked by the marriage and the estate entitlement of her children would be significantly reduced because the law would treat Luisa as if she died without a Will. Fernando would be entitled to receive the spousal preferential share in the amount of \$350,000 as well as an additional one-third of the value of the estate (approximately \$883,333), for a total of approximately \$1,233,333. Luisa's children would equally share the remaining two-thirds of the estate, and each receive approximately \$588,889.

If at the time of Luisa's death, the value of her estate was \$350,000 or less, Fernando would receive the entire estate, as the spousal preferential share, and Luisa's children would not receive anything despite her stated intention in her Will for the children to receive her entire estate.

However, the Accelerating Access to Justice Act, 2021, has repealed the rule that marriage automatically revokes a Will. Section 16 of the Act, which provides that a Will is revoked by the marriage of the testator except in specified circumstances, is repealed. Accordingly, in our scenario, if Fernando and Luisa were to get married in 2022, their marriage would not automatically revoke the estate entitlement of Luisa's children as indicated in her Will.

In **Part Two**, we will consider the impact of separation and divorce on the current law and new legislation that took effect in 2022.

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