

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 2 — The Impact of Separation or Divorce on Estate Planning in Ontario



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. This is part two of a two-part series that will consider the impact of the new legislation on marital relationships and follow Luisa and Fernando, through various stages of their relationship and estate planning.

Under section 17(2), of the Succession Law Reform Act (SLRA), any gift made in a Will between married spouses where: (i) the marriage is declared a nullity, or (ii) the spouses are divorced, will be revoked and the Will is interpreted as if the former spouse predeceased the spouse making the Will (the testator spouse). However, this rule did not apply to spouses who are separated at the time of the testator spouse's death.

Additionally, when a separated spouse died without a Will (known as dying intestate), the SLRA continued to permit the surviving separated spouse to inherit from the estate of the deceased separated spouse.



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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.

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Section 17 (3) was added to address this legislative gap, and now disentitles separated spouses from receiving benefits and powers under the SLRA.

The new section now provides that a spouse shall not inherit any of their deceased spouse's property if the parties were separated at the time of the testator's death.

Let's consider the following scenario:

Luisa and Fernando were married on March 15, 2018. They were married for four years, but separated for three of those four years. They initially met through a telephone dating service and were married after six months of dating. Luisa, age 77 had significantly more wealth than Fernando, age 50. She also had three adult children from a previous marriage, with whom she used to be very close. Luisa's children opposed the marriage because they had concerns about Fernando's motives. In Luisa's current Will, which she revised after she married Fernando, her children were named as the beneficiaries (in equal shares) of one-half of her estate, valued at 3 million dollars (net value). Fernando was named as the beneficiary of the other half of her estate.

After the first year of marriage, Luisa started to believe her children were right to question Fernando's motives. She separated from him, with the intention to file for divorce. Luisa also planned to revise her Will, to leave her entire estate to her children in equal shares. Sadly,

due to a number of health problems that have plagued Luisa over the past few years, and numerous delays in legal proceedings brought by Fernando, she was unable to finalize the divorce or revise her Will prior to suddenly passing away.

Under the SLRA prior to June 2021, Fernando would have been entitled to receive a 50% share of Luisa's estate as indicated in her Will, even though she separated from him and filed for divorce immediately before her death and intended that only her children receive her estate.

Pursuant to the Accelerating Access to Justice Act, 2021 which took effect in 2022, a separated spouse will no longer be entitled to inherit from their deceased spouse's estate, and will be treated as if they predeceased the testator spouse. This rule will apply in situations where a spouse passes away with or without a Will. The new law provides that spouses would be considered separated if immediately before the testator spouse's death, the married couple was living apart due to a breakdown in the marriage for three or more years.

In our scenario, at the time of Luisa's death, Fernando would not be entitled to receive one-half of her estate, notwithstanding that she was unable to revise her Will prior to her death. The effect of their separation would be to revoke any estate entitlement to Fernando, so that her entire estate would be equally divided among her surviving children.

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Part 1- The Impact of Marriage on a Will

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