

CASE IN POINT

Sales Tax Estate Planning Underwriting & Product Newsletter

Blended families, inheritance and intestacy



The 2011 Canadian Census counted step families for the first time, finding that they comprised one in eight couple families with children still living with them. The number of blended families is growing and is more prevalent in Quebec than elsewhere. Approximately half of these families were married couples. The Portrait of children's family life in Canada in 2016 found that 1 in 10 children under that age of 14 was part of a step family¹. Given that most children older than 14 and many young adult children still live at home, the ratio of children in blended families is actually higher.

It's not unusual for the step-parent to treat and raise stepchildren as if they were their own flesh and blood, particularly if the step-children were young when the couple got together. Common law relationships are also becoming more common². The mix makes for a complex blended family. What happens when the non-biological parent dies without a will?

Let's consider the Peters Estate (Re), 2015 ABQB 168 CanLII and Peters v Peters Estate, 2015 ABCA 301.

Ileen Peters was married to Lester Peters for 43 years. Lester had four daughters from a previous marriage. The couple had one son together. Ileen treated the girls as her own daughters. The sentiment went both ways.

All five children pitched in financially and otherwise to take care of Lester and Ileen. They behaved like a loving, caring family unit for many years. They even helped Lester and Ileen when the parents were petitioned into bankruptcy.



Peter A. Wouters,
Director, Tax
Retirement &
Estate Planning
Services, Wealth

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 annually provides 100's 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.

Peter can be reached at
peter.wouters@empire.ca

When Lester died, all five children gave up any claim to Lester's estate in favour of Ileen, their "mother".

Ileen died without a will. One of her step daughters sought direction from the court with the aim of having Ileen's estate divided equally among the five children. Justice Rodney A Jerke had to rule on the definition of children.

Under Alberta Wills and Succession Act, Ileen's estate was to be distributed to her surviving descendants. The general definition of lineal descendants that Justice Jerke applied was "a blood relative in the direct line of descent — children, grandchildren, and great-grandchildren are lineal descendants" ³

The outcome of this was that the son Ileen and Lester had together was her only blood relative and her only lineal descendant out of the five children.

Justice concluded his decision as follows. "This case is an example of the personal difficulties and harm to relationships which can occur when individuals do not have a will. The distribution of this modest estate has become an instrument with the potential to create, enhance or perpetuate ill will amongst five family members at a time when they should instead be benefiting from good memories of their mother and father."⁴

The step daughters appealed the decision on the grounds that "the current Wills and Succession Act has failed to recognize the need to protect blended (step) families." The appeal court stated that "the legislation is clear in its intent and we are bound to follow it."⁴ The step daughters lost their appeal.

You may feel that this is unfair. The step daughters in this case study certainly felt so. They, along with their step brother acted like a family, collectively helped out the parents and grew up being treated as if they Ileen's natural children. Their definition of family included Ileen. Ileen's behaviour inferred that all five children were her family. The rules of intestacy laid out in the various provinces have a simpler definition that only includes natural and adopted children. One takeaway is to draw up a valid will that specifically identifies all individuals you consider your family to inherit your estate.

Another is to consider owning life insurance that allows you to specifically name any people you consider your of family as beneficiaries. Deal with professional advisors to help you get this right. That way, you can be better assured that the people you love most can inherit what you leave behind.



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¹ Statistics Canada - Portrait of children's family life in Canada in 2016
www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016006/98-200-x2016006-eng.cfm

² Stats Canada, 2019 Table 17-10-0060-01

³ Peters Estate (Re), 2015 ABQB 168 CanLII, para 10

⁴ Ibid, para. 20

⁵ Peters v Peters Estate, 2015 ABCA 301, para 16

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