

New Common-Law Legislation May Get Messy

published 03/05/2003

Question: Does the recent Supreme Court ruling have an effect on Bill 53?

Bill 53 was passed, but has not yet been proclaimed to be in effect. It is believed the Manitoba government was waiting for the Supreme Court of Canada to give its decision in the case of Nova Scotia v. Walsh and Bona, which was a constitutional challenge of the legislated difference between common-law partnerships and formal marriages. The decision was delivered December 19 and basically found the laws that gave certain rights to married couples but not common-law couples was not discriminatory and the laws were upheld. The result of the decision on whether Bill 53 will be proclaimed as it has been written or whether it will be changed or left unproclaimed remains to be seen. It should be noted that some of the other provinces already have laws similar to Bill 53 in effect. Until such time as The Common-Law Partner's Property and Related Amendments Act is proclaimed in Manitoba, the current laws apply and common-law partner rights are limited.



Question: Are all wills in danger of revocation under the new laws?

Not necessarily. A previous article touched on some exceptions to the general rule that existing wills are revoked by a qualifying common-law relationship, including wills made in specific contemplation of the common-law relationship or if your common-law partner is already named as a 'beneficiary' in your will. The Wills Act does not define what gift qualifies

as a beneficiary, so arguably even a nominal gift to the person who becomes your common-law partner would save your will from being automatically revoked. In addition, if your existing will fulfils your obligations to an earlier spouse or partner pursuant to a court order or separation agreement, then it will not be revoked. Finally, if the person who made the will lacks the capacity to make a new one at the time the law becomes effective, the existing will is not revoked.

Question: I am separated from my husband and he does not want a divorce. I was OK with that, but now I have a live-in boyfriend. Who gets what if I die, and can I leave everything to my live-in?

This could be a very complicated situation. If your live-in qualifies as a common-law partner under the various pieces of legislation (and keep in mind that all of the legislation is not consistent, as The Family Property Act [FPA] requires three years of living together, whereas The Dependent's Relief Act [DRA] and The Wills Act require either three years living together or one year living together, with there being a child of the union), he will have rights to your estate. This may be by way of an intestacy (dying without a will) if any existing will you had was automatically revoked, or it may be under the DRA or FPA as discussed above. In addition, if you had not resolved all issues of support and property division with your husband, he could also have claims against your estate. Even if you had done a new will and left everything to your live-in, your husband would still be able to make a claim for these outstanding issues from your marriage. Clearly, the new legislation has the potential to make for some very messy estates when there are competing interests from different relationships.

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