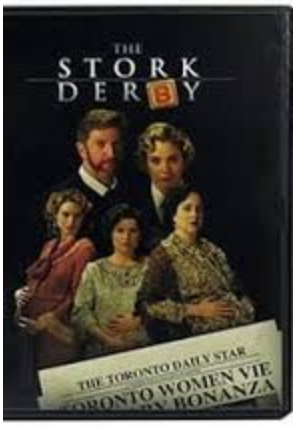
CAPRICIOUS TESTATOR – THE CANADIAN STORK DERBY

Mar 8, 2016 | Uncategorized | 0 comments

By Dorothy Hagel

One of the most (in)famous cases in Canadian estate litigation is the case involving the will of Charles Millar, a barrister known for his unusual sense of humor. Charles Millar died as a bachelor in 1926. His last will included many unusual clauses. For instance, he left a property in Jamaica to three people he knew despised each other. He also left stocks in a brewery to religious leaders known to disapprove of alcohol.

However, the most outrageous clause in Charles Millar's last will was one leaving the residue of his large estate in trust, for 10 years, to be paid out to the Toronto mother, who would give birth to highest number children since his death. This encouraged some women to compete in producing as many children as possible during the ten-year span from Millar's death to the date that the trust was to be distributed. What ensued became known as the **Stork Derby**.
While eight mothers argued that they had won the Stork Derby, only four women actually qualified. It was determined that these four women had in fact given birth to nine live children, born in wedlock, during the ten year span. The four mothers shared $570,000, which in 1938 was an enormous sum.



Millar himself recognized that his wish to distribute his estate in this manner was an unusual request. He wrote that his will was "necessarily uncommon and capricious…" and then continued on saying that he had "no dependants [sic] or near relations" and therefore had "no duty" to "leave any property" to anyone. However, a distant next of kin hired a lawyer and challenged the will. Their argument was that the will was so outrageous that it should not be probated by any court as that would be contrary to "public policy."

The trial judge ruled that the will was valid, meaning that Millar could indeed leave the residue of his estate to the Toronto mother who had given birth to the most children in the ten years period since his death. This essentially meant that the next of kin were not entitled to any of the estate. The next of kin appealed the trial judge's decision. On appeals, both Court of Appeals and the Supreme Court of Canada agreed with the trial judge and dismissed the appeals.

The real winner of the Stork Derby was not the four women who would split the trust, but rather the Toronto estate law industry. Over thirty lawyers and nine judges were involved in the process. This amounts to countless hours of preparation work, affidavits, pleadings, and, of course, legal fees.

What can we take from Millar's decision?

1. Being related to someone does not necessarily give automatic right to inheritance. Subject to obligation to support the dependents, testators have the right to dispose of their property as they wish.

2. Simply because a will is unusual, does not necessarily make it invalid.

Dorothy Hagel *JD, CFP is a Barrister, Solicitor & Notary Public with* HAGEL LAWFIRM. She can be reached at dorothy.hagel@dhestatelaw.com