



Late-Live “Love” and Testamentary Distributions

December 7, 2016 | MBOT



By Dorothy Hagel

Clarence is an unmarried, elderly gentleman. His will provides that the bulk of his estate is to go to Sandra, a young friend, while his relatives receive relatively small bequests.

After Clarence’s death, his relatives are stunned to discover the existence of Sandra and the will under which she benefits. As far as they knew, Clarence’s only will was executed twenty years prior and distributed his estate solely within his family.

Predictably, a lawsuit is initiated. After seven years’ worth of legal fees on both sides, all of which are paid by Clarence’s estate, the Supreme Court upheld the will benefitting Sandra.

The above is based on a real case^[i] that is cited in courts across Canada to this day. What lessons can you as a person executing a will, a beneficiary under a will, or a disinherited relative take from it?

Firstly, a lawyer was not involved in the drafting or the execution of Clarence's will. When drafting or executing a will it is always advisable to have the assistance of an experienced estates lawyer, as doing so will greatly increase the likelihood of your wishes being carried out as you have specified. The case is also a cautionary tale for those who change their will dramatically without informing those concerned. While there is of course no obligation to tell those close to you that they can or cannot expect to benefit under your will, had Clarence explained his new will to his family a great deal of time, money and, presumably, heartache could have been avoided.

Secondly, where you are aware that you are a beneficiary under a will, it is advisable to avoid even the appearance of suspicious circumstances. Sandra was heavily involved in the drafting and execution of Clarence's will, which provided plentiful ammunition for his family to call foul.

Lastly, if you find yourself 'cut out' of a will, you have to ask whether you have grounds to challenge the will. Usually, the simple fact that you believed you would receive a benefit or a greater benefit is not enough. People are, with certain statutory exemptions, free to dispose of their property as they see fit. Mounting a legal challenge is expensive, time-consuming and, without proper legal advice, unlikely to succeed.

[i] *Vout v. Hay* [1995] 2 SCR 876

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

Republished with permission from MBOT