

News**Documents and a testator's wishes****A high percentage of affluent Canadians do not have wills. A recent judgment from B.C. demonstrates the resulting difficulties**

By Susan Yellin | April 2015

Although financial advisors frequently remind clients about the importance of having a will and documentation for large transactions, a recent judgment from British Columbia is a painful reminder that many people still refuse to address these issues.

The decision in *Young Estate v. Szabo* highlights the crucial importance of a will, as well as the need to fully document financial transactions between individuals who are not spouses.

The March decision details the difficulties raised by individual recollections in the absence of proper documentation. It also demonstrates how dependents can be harmed when friendship stands in for lack of even basic documentation, notes Mark Halpern, an insurance expert who holds the trust and estate practitioner designation.

"The problem with handshakes is that they are only valid when two people are alive," says Halpern, who is president of illnessPROTECTION.com Inc. in Markham, Ont. "When one person is gone, there is always two sides of the story, but you are only ever getting one side, leaving your family and dependents in a very vulnerable situation."

Intestacy is not a small problem, even among affluent clients. A study by Canadian Imperial Bank of Commerce in 2012 found that only 40% of 544,000 Canadians surveyed with a net worth of \$1.5 million or more in investible assets had a will; among that number of wills, 80% were not up to date.

And while many people assume their estate will be distributed according to their intentions, even without a will, that is far from guaranteed. Says Halpern: "You have to communicate to someone other than your spouse where your will is, where your bank accounts are and where your life insurance is kept because you can have an event that, at first, is an emotional issue, but it can move quickly into a financial issue."

The decision deals with the estate of Caroline Young, who died in 2011 at age 50. Although she was a registered nurse, she had not worked since 1992 because of a health problem. She was the single mother of a boy, now aged 12, and lived on a variety of disability supports. She also owned two condominiums in Vancouver. There was no financial support from her son's father.

Young met Richard Szabo in the spring of 2010. Szabo owned and lived in a condominium in the same North Vancouver building in which Young lived. Later that year, Szabo decided to rent out his unit to pay down a \$53,000 credit card debt and moved into his truck. Early in 2011, he was injured at his job at Air Canada and went on disability. Young offered to take Szabo in and he began living in her condo. There was no romantic element to the relationship.

Szabo helped Young out by taking her son to soccer games and practices and helping him with his homework, among other types of non-financial assistance.

By the summer, Young and Szabo had decided to sell their condos and buy a waterfront home, in which they would live separately. Their offer on a \$1.5-million property was not accepted.

On Oct. 6, 2011, Young borrowed \$100,000, secured against her condo. She then gave a cheque for the same amount

to Szabo, which he used to pay off \$53,000 in credit card debt. A few weeks later, Young was found unconscious in her bedroom by Szabo. She died shortly afterward, without a will.

While at the hospital, Szabo told Young's sister that the money was for a house purchase. A few days later, however, the sister said, Szabo told her that the cheque was a gift. There was no written agreement concerning the money.

Litigation was commenced by B.C.'s official administrator for the return of the \$100,000 to Young's estate. The court ruled that the money was not a gift and must be returned. A series of inconsistent statements by Szabo about the purpose of the cheque, including his own court testimony, were significant factors in the court's decision. Other factors supporting the decision included: Young's focus on purchasing real estate; the absence of a romantic relationship; the funds were borrowed and represented a substantial portion of Young's net worth; Young had a young son whose father provided no financial support.

The case points to the need to have a will, Halpern says, especially if there are dependent children.

Provinces differ in the treatment of intestacies. Most provide the surviving spouse with the first \$200,000-\$300,000 of an estate, with the remainder divided between the spouse and the dependents.

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