

Predatory Marriage: A growing threat?

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Predatory Marriage

- **marriage to vulnerable adult where intention is to secure a share of their estate**
- **may be encouraged by difficulty of having a marriage declared void by a court, after the fact**

Impact of Marriage – Family Law

- **If a person is married to another individual or is the “Adult Interdependent Partner” of another person,**
 - property can be divided between the parties; and
 - each partner may have an obligation to support the other financially

Impact of Marriage – Family Law

“Adult Interdependent Relationship”?

Not a “checklist”, but relevant factors include:

- whether or not the persons have a conjugal relationship;
- the degree of exclusivity of the relationship;
- the conduct and habits of the persons in respect of household activities and living arrangements;
- the degree to which the persons hold themselves out to others as an economic and domestic unit;

Impact of Marriage – Family Law

“Adult Interdependent Relationship”?

Not a “checklist”, but relevant factors include:

- the degree to which the persons formalize their legal obligations, intentions and responsibilities toward one another;
- the extent to which direct and indirect contributions have been made by either person to the other or to their mutual well-being;
- the degree of financial dependence or interdependence and any arrangements for financial support between the persons;
- the care and support of children;
- the ownership, use, and acquisition of property.

Impact of Marriage – Estates Law

Wills and Succession Act, SA 2010, c W-12.2

- A “surviving spouse or partner” means the surviving spouse or surviving adult interdependent partner of a deceased

Impact of Marriage – Estates Law

Legal Consequences – If a spouse dies...

- If the spouse dies with a will, then the survivor can sue to claim a larger share of the deceased's estate.
- If the spouse dies without a will, then the inheritance of the spouse/partner depends on whether the deceased had children:
 - no children = entire share to spouse/partner
 - if all descendants of deceased are also descendants of survivor = entire share to survivor
 - if any of deceased's descendants are not descendants of the surviving spouse/partner, then survivor gets preferential share
- Rights as against a family home

Predatory Marriage:

What you need to know about a growing threat

Capacity to Marry

Capacity to Marry - Legislation

Marriage Act, R.S.B.C. 1996, c. 282:

- solemnizing marriages
- licence requirements
- manner in which marriages are registered

Capacity to Marry - Policy

Respect for the adult's autonomy and right to make their own choices

vs.

Protection of vulnerable persons who may have diminished capacity

Capacity to Marry

- **requires more than mere appreciation of marriage ceremony**
- **must understand nature of marriage contract, responsibilities of marriage**
- **marriage is considered a “simple contract”**

Capacity to Marry

- **different test of capacity for every action**
- **“capacity hierarchy”**
- **decisional capacity to marry is the “simplest”**

Capacity to Marry - Origin

Durham v Durham (1885), 10 P.D. 80

- origin of description of marriage as “not requiring a high degree of intelligence to understand”
- idea of marriage as requiring “protection” by the man, “submission” by the woman

Capacity to Marry

A prospective spouse must understand at the very least that marriage involves the following responsibilities:

- (a) to cohabit and make a home with the other spouse;**
- (b) to make financial provision for the spouse; and**
- (c) to consider, in the appropriate circumstances, the possibility of having children.**

Predatory Marriage:

What you need to know about a growing threat

Capacity to Marry - Examples

Capacity to Marry - Examples

***Sung Estate, Re*, [2003] O.J. No. 1593 (Ont. S.C.J.)
affirmed by [2004] O.J. No. 4496 (Ont. C.A.)**

- marriage found invalid
- to marry, a person must understand:
 - the nature of the marriage contract;
 - the state of previous marriages;
 - one's children; and
 - how they may be affected

Capacity to Marry - Examples

***Ross-Scott v Groves Estate*, 2014 BCSC 435**

- modern marriage
- can be incapable of managing financial affairs, but still capable of marriage
- marriage found invalid

Capacity to Marry - Examples

Devore-Thompson v Poulain, 2017 BCSC 1289

- decisional capacity to marry requires an understanding of several factors
- predatory marriage
- marriage found invalid

Capacity to Marry - Examples

Hunt v. Worrod, 2017 ONSC 7397

- whether person has capacity to understand the nature of the contract and duties and responsibilities it creates
- informed by the ability to manage oneself and one's affairs
- tension between autonomy and possibility that the adult did not fully appreciate how marriage affected his legal status or contractual obligations
- marriage invalid

Predatory Marriage:

What you need to know about a growing threat

Elder Abuse – What to watch for

Elder Abuse Defined

Elder abuse occurs where harm is caused, or adequate care is not provided, to an older adult. It can take different forms:

- physical
- financial
- psychological
- sexual
- neglect

Elder Abuse – Warning Signs

- unexplained injury (bruises, sprains, broken bones) or changes in body weight
- torn clothing
- controlling behaviour by a caregiver or other person
- signs that may look like dementia (mumbling to oneself, rocking)
- unsanitary living conditions or poor hygiene
- changes in spending or finances
- changes to estate plan
- unusual or unnecessary purchases

QUESTIONS / COMMENTS





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