

Wills, Trusts & Estates

Thirteen bad things that happen when you die without a will in Ontario

By **Marie G. Michaels**

Marie G. Michaels

(November 4, 2021, 8:44 AM EDT) -- For more than a decade, survey after survey conducted by the big banks have shown that about 50 per cent of Canadians still do not have a will. If any of these apply to you: 1) you are over 18; 2) have a spouse or children; 3) have disabled/special needs children; 4) are looking after elderly relatives; 5) own property; or 6) are a business owner with assets, employees and clients/customers, you really need a will to make it clear what you want to have happen when you die.

To this end, the Canadian Bar Association (CBA) has designated November as "Make a Will Month." If you don't have large assets, a grand estate with foreign holdings, or complicated tax needs, you can get a basic will done in 30 to 60 days.

Here are 13 bad things that happen when you die without a will in Ontario; in other words, intestate:

1. If you die without a will, the government decides how your estate will be divided. *The Succession Law Reform Act*, R.S.O. 1990, c S.26 dictates that your surviving married spouse is entitled to the first \$200,000 of your net estate, and your biological children and married spouse then share the remainder in a defined manner. If, however, you had no spouse and no children, the law sets out a type of "pecking order" of who then inherits, and in which order.
2. If you have minor children who receive part of your estate because it was worth more than \$200,000, the government is the automatic trustee who will hold their share of the inheritance until they attain age 18 — the age of majority in Ontario. In a will you can name a trustee and have the monies held longer for those who are 18 and older. You can also authorize your trustee to withdraw monies from the trust to support the child and support their education.
3. If you reside in a common law relationship and die without a will, your common law spouse is not entitled to share in any part of your estate and, if you were supporting them financially, they would have to sue your estate under the *Succession Law Reform Act* for an order to compel your estate to support them. Meanwhile, it is quite easy to provide for a common law partner by making your wishes known in a will.
4. Not only will your common law spouse not inherit your estate if you die without a will, they are also not necessarily the first choice of the court to act as administrator of your estate, especially if you have adult children surviving you.
5. If you die without a will, anyone can apply to the court to be confirmed as your executor (estate administrator). Several individuals who think they may be the most appropriate person to fulfil the duties involved in administering your estate, may come forward and even argue about the choice of executor. And while the court spends time and resources deciding which applicant is best, the estate may suffer financial losses, and people whom you supported may suffer while waiting to receive support.
6. If you die without a will and no one applies to the court to act as estate administrator, the Ontario

Public Guardian & Trustee will have to assume that role. Of course, they have no idea what you may have wanted with respect to any aspect of your estate.

7. If you had plans to leave a special article or possession to someone specific in your family, or to a friend, that cannot happen because those wishes were not included in a will, as they ought to have been.

8. You may have had discussions with a family member, friend or even a common law spouse about your wishes with respect to your remains (cremation with your ashes kept or scattered somewhere specific), but those will be ignored in favour of the person administering your estate making a choice, one that is often based on cost.

9. If you have a disabled adult child, who receives monthly Ontario Disability Support Program (ODSP) benefits and free dental and prescription medication, if you did not create a Henson Trust before your death, or create one in your will (as many people do), the Ontario government will cancel all of your child's benefits until they deem the inheritance reasonably spent.

10. If you die without a will and have minor children, if the other parent has not been involved in their lives (or died with you), there may be a custody fight between your surviving relatives about who takes custody of your children, without any approval by you. In fact, if the other parent is alive but you had reasons to stop them from having custody, you will be dead and your relatives possibly powerless to prevent that occurrence.

11. If you have a charity that is close to your heart and you intended to leave a bequest to help their cause, the estate administrator will be unable to make any donation, even if they knew it would have been one of your wishes, because they lack the authorization to do so. Why? Because you did not make a will setting out your wishes before you died.

12. If you are a business owner who died without a will, who will operate your business until the court approves the appointment of a person as your estate administrator? Will that person be able to manage the operation of your business until it is sold or wound up? If someone from the business applies to be estate administrator, will they be the right person to manage the sale of your personal property and house to provide for your minor children?

13. If you die without a will, you run the risk of leaving your estate to bear impossibly high probate fees payable to the courts, rather than planning your estate to minimize those costs. One mechanism is to have two operating wills, one for those assets that must be probated, and one to cover those that do not. Probate fees are attracted by assets that must be probated, such as real estate and certain investments.

Marie G. Michaels, managing partner of M.G. Michaels & Associates, has been practising family law, wills and estates law and residential real estate law for more than 25 years in Whitby and Ajax, Ont.

Photo credit / ALLVISIONN ISTOCKPHOTO.COM

Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Richard Skinulis at Richard.Skinulis@lexisnexis.ca or call 437- 828-6772.