

# **Wills and Estates – Tips and Traps for Undocumented Relationships**

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*Beyond Blended Families*

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## **WILLS AND ESTATES – TIPS AND TRAPS FOR UNDOCUMENTED RELATIONSHIPS**

### **WITH A TOPIC SUCH AS THIS THE QUESTION IS WHERE DO YOU BEGIN?**

#### **Nothing is Simple Anymore.**

Not too long ago, a will generally consisted of “I leave everything to my wife, and failing her to our children”. Divorce was rarely considered, and although people left their relationships, because a divorce was so difficult to obtain, people lived in “sin” and neighbours whispered about the “common-law couple down the street”. It always sounded so racy and exciting. There certainly were no same sex couples, although the “old maids” and “bachelors” who had lived together for decades were often talked about in the same hushed tones with an added wink. There was no law protecting common-law couples whether heterosexual or same sex, and legal relationships established as a result of invitro fertilization or surrogacy were unheard of. The idea of a trust for a spouse or a disabled child meant you had a complicated estate, and a surrogate court judge would have been apoplectic having to consider a probate with a trust for pets. Legislation has been passed to protect animals, common-law couples, the LGBTQ community and deal with advent of in vitro and surrogacy. All these rights can now be considered and dealt with in a will, or one may rely on the legislation in place in your province for such protection.

As society has become more complex in our relationships, laws and legislation, so too are the steps, we as lawyers must consider when preparing a will or an overall estate plan for a party in an undocumented relationship.

### **WHAT IS AN UNDOCUMENTED RELATIONSHIP?**

- Two families unknown to the other
- Two families one knows about the other
- Two families known to the other
- Spouse in a secret relationship that is mainly sexual in nature
- Spouse in a secret relationship that is sexual and financial in nature
- Husband/father has child where he has acknowledged paternity and is not keeping the child's existence a secret
- Husband/father has child where he has acknowledged paternity and is keeping the child's existence a secret