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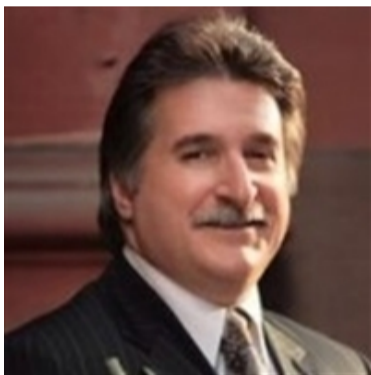
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Estates & Wills & Trusts

Estate law reform needed to protect elderly



It's easier to get a marriage license than a driver's license in Ontario which leaves elderly people particularly vulnerable to predators chasing their estates, says Toronto-area estate litigator [Charles Ticker](#).

Ticker, who has practised for over 35 years and who restricts his practice to estate litigation, mediation and estate administration, says a recent series of investigative reports on [predatory marriages](#) in the [Toronto Star](#) highlights the need to rethink legislation that protects the elderly.

These marriages can involve a caregiver or neighbour targeting an elderly person with dementia or memory issues who convinces them to marry them in exchange for lifetime care, the article says. The predator then stands to inherit the entire or a large part of the estate because if there was a will, it is revoked upon marriage. The predator spouse can take advantage of the preferential treatment given to married spouses under Ontario's intestacy rules set out in Part II of the Succession Law Reform Act.

"You can get a marriage license with more ease than a driver's license," Ticker tells [AdvocateDaily.com](#). "While the Ontario Marriage Act says you can't get married if you are intoxicated by liquor or drugs, it really doesn't address issues like dementia."

He suggests, given the aging population and the higher incidence of dementia, it's prudent to consider whether a capacity test might be in order. "You have to be interviewed and tested every two years for your driver's license in Ontario after the age of 80, so why wouldn't we consider a similar test or at least a letter from your doctor before you marry after age 80," he asks. "On the other hand, there are issues of privacy and equality under the law, but this is a serious problem. The problem is that the capacity to marry is quite low."

Ontario's estate laws, which revoke wills on marriage, are a throwback to a time when the world was more paternalistic, Ticker says.

"These laws were there to protect women, because in those days they were most vulnerable," he says. "Upon the passing of her spouse, this gave a woman some claim to property and assets for support."

The Family Law Act and the Succession Law Reform Act provide other remedies for surviving spouses, Ticker says, which brings into question why revocation on marriage is still on the books.

He notes B.C. and Alberta have struck out revocation of wills upon marriage in their legislation, and many in the legal community have been urging an overall update to the laws governing wills and estates.

"This is, of course, being driven by the enormous amount of wealth being transferred by the aging population," he says. "It is time we started to look more carefully at the issues."

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