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Estates & Wills & Trusts

Invalid marriage incentive for potential beneficiaries to challenge will



Couples married by an unlicensed officiant may need to go to court to validate their unions in order to minimize the risk of a challenge to their wills further down the line, says Toronto-area estate litigator [Charles Ticker](#).

A recent story in the [Toronto Star](#) reported on the arrest of a man accused of performing at least 48 marriages without authorization between August 2013 and July 2016.

Ticker explains that the large disparity in estates rights between a surviving married spouse and a surviving common-law spouse could provide an incentive for other potential beneficiaries to challenge the validity of a marriage.

For example, married spouses can claim an equalization payment under Ontario's Family Law Act (FLA) if they are unsatisfied with their gift under the will. In cases of intestacy, the Succession Law Reform Act (SLRA) dictates that the first \$200,000 goes to the surviving married spouse, with the rest split between the spouse and any children of the deceased.

While surviving common-law spouses can claim support for themselves under the SLRA if they cohabited for three years or had a relationship of some permanence and are the natural or adoptive parents of a child, their property rights are very limited in the estates context, Ticker tells [AdvocateDaily.com](#).

"I could see someone arguing that the surviving spouse has no right to an equalization payment because they weren't legally married," he says.

In the case of a second marriage, or if the deceased had an existing will that was revoked by the unlicensed — and possibly invalid — marriage, a challenge is even more likely, Ticker says.

"Say the earlier will left everything to the kids from the first marriage, but was then automatically revoked by the second marriage. The children could very well want to argue the marriage was not valid," he says.

Section 31 of the province's *Marriage Act* offers couples a route to validate a marriage conducted without authority, but Ticker says it's "certainly not a slam dunk."

"You would probably need to go before a judge, get it reviewed and get a decision," he says.

The case of [Isse v. Said](#), 2012 ONSC 1829 (CanLII) spells out the four necessary requirements of the marriage for it to be found valid:

- The marriage must have been solemnized in good faith;
- The marriage must have been intended to be in compliance with the Marriage Act;
- Neither party was under a legal disqualification to contract marriage; and
- The parties must have lived together and cohabited as a married couple after solemnization.



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For surviving spouses making claims under the SLRA and the FLA, each statute defines spouse to include someone who entered into a void marriage in good faith, but Ticker notes “there could be evidentiary issues” that would “most likely require a court ruling.”

According to the Star, Paul Cogan, a 69-year-old officiant with Prideful Weddings, was licensed to perform marriages in Ontario between May 2002 and August 2013, but then went unlicensed until July of this year after losing the support of his religious group.

Police allege he used another minister’s name to continue to authorize marriages during his unlicensed period, with Det. Const. John Ozols telling the Star a worker in Ontario’s Office of the Registrar General first became suspicious after contacting the minister to query a marriage certificate.

“The minister went through his records and said, ‘I never married them,’” Ozols told the newspaper. “(Cogan’s) authority was revoked, so that’s the only way he could register marriages, by using someone else’s name,” he alleged.

Cogan is out on \$500 bail, and is scheduled to appear in court on Oct. 6 to face charges solemnizing a marriage without authority, fraud, forgery, personation with intent and uttering a forged document, the Star reports.

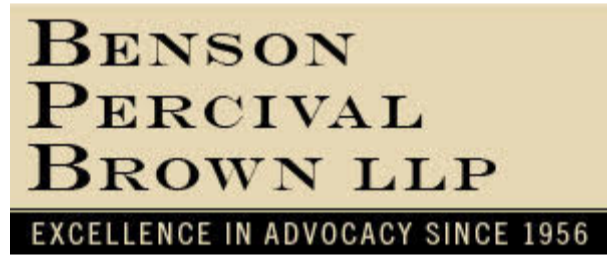
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