

Dangers of a Younger Wife

The romantic entanglement of an elderly parent in failing physical and mental health can be a nightmare for children. To a parent who is lonely and vulnerable the prospect of marrying a much younger spouse who provides the attention heretofore missing from children can be appealing. What often follows is a change in the Will.

Such was the case in *Banton v. Banton*. The Ontario court heard how the deceased went into a nursing home. He had lost both his first and second wife and at the age of 88 struck up a romantic relationship with a 31 year old waitress working in the nursing home. Up until this point in time Mr. Banton had a warm and loving relationship with his five children. But, when Mr. Banton's relationship with his young waitress intensified, the children arranged for a doctor to assess his competency and had a certificate of incompetence issued. Unfortunately, things just escalated.

The young woman married Mr. Banton. The day after his wedding night, she took him to her lawyer. The solicitor drafted a Will that left everything to the new Mrs. Banton and nothing to the children. The lawyer arranged for a doctor to examine Mr. Banton and the ensuing medical report claimed that Mr. Banton had the capacity to manage his own property. After Mr. Banton died the matter ended up in court. The judge hearing the case decided the Will was invalid for two reasons:

(i) Although Mr. Banton knew the nature and effect of making a Will, and knew how much he

was worth, he had become insanely delusional about his children's motives and behaviour, and as a result, lacked the capacity to make a Will.

(ii) The waitress had unduly influenced Mr. Banton into making the new Will and cutting out all of his children. She met with and instructed the lawyers when he made his new Will. The court found her to be a strong-willed person who took advantage of a sickly, weak, old man.

Interestingly enough, the judge found that while Mr. Banton did not have the capacity to make a Will, he still had the capacity to get married. As a result, while the new Will was invalid, so were all of the previous ones because under Ontario law, when someone remarries all prior Wills are automatically revoked. As a result, under the Ontario laws of intestacy (where there is no Will), the widow-waitress was still entitled to a substantial share of the estate.



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Dealing with vulnerable elderly people is difficult for all concerned. Even well meaning good children who act in the best interests of their parents can find themselves in difficult situations. Going to court in circumstances like these may or may not be the right thing to do. Despite the temptation to jump to conclusions, it would be a mistake to substitute this case review for substantive legal advice. For those considering this option, there is no replacement for hiring a competent solicitor whose own research, analysis and judgment should be canvassed prior to going to court.

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