

Testacy or Intestacy? That is the question.

Guest Editorial by Robert Coates, BSc, LLB, TEP



The title of this article mimics the question "To be or not to be?" asked by Shakespeare's Hamlet. Hamlet was a man who at times acted insanely towards

his family. On the other hand, he earnestly tried to determine right from wrong.

These are the eternal struggles that most of us experience in life. The question for today is vis-à-vis our families, loved ones and the things we care about, including charities: *What is the best way to plan for death?*

My experience, after 30 years practicing as a lawyer, is that the majority of people plan for death by avoiding a plan. They believe that if they plan for death by making a will, then they will be tempting death. So the resolution of the conundrum is to not plan at all.

This is the camp that believes that intestacy is for them – intestacy meaning that they will die without a will. Intestacy means that the Succession Law Reform Act will stipulate how your estate will be administered, from your beneficiaries (awarding your assets to blood relatives instead of your common-law spouse, for example)

to the costly and impersonal appointment of an Estate Trustee. Is that what you intended?

By making a will, you can avoid setting up your family members against each other. You can protect those you love and ensure that they receive appropriate assets. You can ensure that your common-law spouse is protected or that your children from your first marriage receive something. You can ensure that charities that are dear to you receive something too. In some cases you can reduce the costs of administering the estate. In a will you appoint the Estate Trustee and you direct that your debts be paid and who will be your beneficiaries. In other words, you make a plan.

Planning for death includes making a will as part of an estate plan. If you chose to be a "testate" kind of person, you get to make planned decisions about the division of your estate on your death, and you protect your loved ones by including them in the plan. You can plan for legitimate reduction of taxes which arise as a result of death, by planned charitable giving.

It all makes sense. Which will you be? A "testate" or an "intestate" kind of person? The choice is yours. Make the smart choice. Don't leave it to an intestacy to determine what happens to your estate.

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