

DEATH IS NOT THE END

PART 1



BY JASON FILEK

*civil litigation , insurance litigation,
property disputes and estate litigation*

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In 1988, Bob Dylan released a song entitled “Death Is Not the End”. While I do not hold myself out to be an expert in the interpretation of Bob Dylan’s lyrics, my impression is that Mr. Dylan was trying to convey a positive message in this song. For example, consider the first verse:

“When you’re sad and when you’re lonely and you haven’t got a friend
Just remember that death is not the end
And all that you’ve held sacred, falls down and does not mend
Just remember that death is not the end
Not the end, not the end
Just remember that death is not the end”

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This optimism shown by Mr. Dylan is clearly in contrast with the cynicism of the 19th century American editorialist Ambrose Bierce, who is credited as saying the following:

“Death is not the end. There remains the litigation over the estate.”

Unfortunately, there is much truth to that comment by Mr. Bierce. It is not uncommon for there to be litigation over an estate, and typically, that litigation arises in four main areas. Those areas are:

1. A wills variation action;
2. A joint tenancy dispute;
3. An intestate deceased (when there is no will); and
4. Validity of a will.

In this article, I will discuss a wills variation action. In British Columbia, the law places an obligation on an individual to provide for his or her spouse and children. The definition of spouse includes a common law spouse, as well as a common law spouse of the same gender. If an individual has failed to provide for their spouse or children by the terms of their will, then the court may vary the terms of the will. On the other hand, if a spouse or child is disinherited, the court may not interfere if there is a good reason for the disinheritance.

Essentially, a wills variation action is commenced when a spouse or child of a deceased person commences a law suit alleging they were not adequately provided for in the will. Such a law suit needs to be commenced within six months from the date of issue of the probate of the will.

The leading authority in this area of law is the Supreme Court of Canada decision of *Tataryn v Tataryn Estate*. In that case, Mr. and Mrs. Tataryn were married for 43 years. Through the efforts of both of them, they amassed an estate valued at approximately \$315,000. However, all of the assets were held in Mr. Tataryn’s name at the time of his death. They had two sons together, one of which Mr. Tataryn disliked. He did not want to leave any of his estate to the disliked son.

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Mr. Tataryn feared that if he left Mrs. Tataryn any of his estate in her own right, that she would pass it on to the disliked son. As a result, in Mr. Tataryn's will, he set up a trust for his wife, and upon her death, everything would pass to the son with whom Mr. Tataryn had a good relationship.

The Supreme Court of Canada ruled that Mr. Tataryn's will did not adequately provide for his wife. Since the marriage was a long one, and Mrs. Tataryn worked hard and contributed much to the assets they acquired, she would have been entitled to maintenance and a share in the family assets had they separated before Mr. Tataryn's death. The court varied the terms of Mr. Tataryn's will, and gave title of the matrimonial home to Mrs. Tataryn, a life interest in a rental property, and the entire residue of the estate (after payment of \$10,000 to each of their sons).

The Tataryn case is an example of circumstances that could potentially lead to a wills variation action. As another example of a situation that could lead to litigation over an estate, please consider the will of Henry Budd. In 1862, he left £200,000 in trust for his two sons on the condition that neither of them grew a moustache.

In a future issue of the Bailiwick, I will discuss joint tenancy disputes, which is the second main area where estate litigation arises.