



CESTNICK

TAX MATTERS

Squabbles over a ring provide lessons to the rest of us

SPECIAL TO THE GLOBE AND MAIL
PUBLISHED JANUARY 20, 2021

It was three years ago when I read, for the first time, the last will and testament of Mr. Richard Clark, dated June 11, 1903. He was my wife's great-great-grandfather. His will ended up in a box in my mother-in-law's basement. Mr. Clark left his wife, Rachel, the brick part of their home (except the three rooms given to their daughter), the plum orchard, henhouse, hog pen, chickens in the poultry house, and the ground in front of the house facing the concession road. If she wished, she was also entitled to a cow, horse and pig, along with proper food and shelter for the animals, and was entitled to use the buggies and cutter. The farm was left to their son, but he was to pay his mother \$120 each year (\$60 on the first of April and November) as long as she lived.

The family always got along, and apparently everyone was happy with what they received. I asked my wife Carolyn if she'd be happy with part of our home and a few chickens when I'm gone. She didn't answer my question, which I assume means "yes, definitely." But not every family gets along when it comes to dividing up an estate. Let me share the

story of a family from British Columbia that ended up in court. We can learn a few things here.

The story

It was on April 17, 2020, that Mrs. M passed away. She had four adult children and named two of them, Patti and Donald, as co-executors and co-trustees in her will. The other two children, Allan and Gayle, were beneficiaries along with Patti and Donald, and the estate was to be divided into four equal shares, one share for each sibling.

In the months and years leading up to her death, Mrs. M was experiencing some cognitive decline. And unfortunately, even before her death, there were disputes and disagreements among the children, which only increased after Mrs. M passed away.

At the centre of the dispute between the siblings was a bolt ring. It's a ring that was made by their father for their mother, Mrs. M, out of a bolt. Their mother never took it off. It had no monetary value at all, but clearly had

significant sentimental value to the children. The bolt ring became the sticking point in the children being able to resolve the issues related to their mother's estate.

Patti made a petition in court to have her brother, Donald, removed as an executor and trustee. In the end, Donald agreed to this under the condition that Patti give the bolt ring, which she had in her possession, to their brother Allan. Donald's view was that, if they could settle the matter of the bolt ring, then it would allow the children to resolve all the disagreements they have about the estate.

Patti argued that her mother had given her the bolt ring in the last months of her life. So, the court had to turn to the issue of whether or not Mrs. M had the mental capacity to make a gift in her last months. As it turns out, Mrs. M had been diagnosed with dementia in May, 2018. Based on the evidence, the judge concluded in his judgment on Oct. 20, 2021, that "regardless of what Mrs. M might have said or done in connection with the bolt ring in the last months of her life, I find that she lacked the capacity to make a gift of it."

It was also clear from the testimonies of the other children that it was always known that the bolt ring should be given to Allan when their mother died. There had even been a meeting on Sept. 15, 2018, where the children met and talked about their mother's possessions, and they had agreed at that time that Allan would receive the bolt ring.

The moral

A few lessons can be learned from this story. First, when you prepare your will and powers of attorney, also prepare a letter of wishes that makes your intentions clear when it comes to certain possessions that more than one family member might want. Share what you would like to see done with these possessions and why.

Second, make sure you update your wills, powers of attorney and letter of wishes regularly. If you wait until you're older, and there's any dispute at all about your mental competency, this could lead to challenges or disputes over your estate. So, don't delay.

Third, watch for danger signs. If your kids aren't getting along today, you should probably assume things will get worse after you've passed away. So, have a meeting and communicate with them today about your estate plan and wishes, summarize the meeting in writing, and make sure the documents I've talked about are all in order.

Tim Cestnick, FCPA, FCA, CPA(IL), CFP, TEP, is an author, and co-founder and CEO of Our Family Office Inc. He can be reached at tim@ourfamilyoffice.ca