New Family Law: estate planning in for change

ROBERT P. MAIN

Bill 1, the new Family Law Act which comes into effect in Ontario on March 1, 1986, will have a deep impact on estates and wills.

One major innovation is that for the purpose of a division of "net family property" (the new phrase for the value of

matrimonial property), the death of a spouse will be treated the same way as a separation or divorce. One problem this will cause is that it may catch a lot of people totally unaware.

Usually when a couple is in the process of separating, they generally know about their rights and

obligations. Often they have obtained legal advice, or have discussed some of the ideas with family and friends, or have seen the issues discussed in the media.

However, in the situation of an estate, so many people are not going to realize these changes in the law until

it is too late.

Let us consider a typical situation of an elderly couple, and all the assets are in the husband's name. He passes away and his will leaves the wife a life interest in the estate, and then after her death, the remainder of the estate will go to their four children.

The widow goes to a lawyer to administer the estate, and he tells her that under the new Family Law Act 1985, her husband's death is to be treated as a separation, and that she is entitled to one-half of the net family property. The life interest in the husband's estate only gives her the right to use the income from the property for herself, and likely the use and occupation of the house as well, and so is far less than half of the value of the estate. The result, if the widow elects to take her rights under the Family Law Act, will be a law suit between the widow and her children, the beneficiaries.

The next problem encountered at this stage is how to value the net family property of the deceased. Since "net is to be excluded from it. family property" does not include the value of property brought into

the marriage, who is to say what the deceased owned back then, or even what it was worth? The deceased obviously is no longer available to tell.

Another major change in a different context is what happens to the bequest after it has been received. On the one hand, the beneficiary will not have to include the asset (or the value of the asset, if it can be traced) in his own net family property if he ever should separate.

On the other hand, any income from the bequest (such as interest, or rent from a real estate property) shall be included in the beneficiary's net family property, unless the deceased expressly stated that such income

So you can expect that the next time you go to see your lawyer to draw

up a will, and you want to leave part of your estate to your children, the lawyer will ask you whether or not you intend your children to include the income from that bequest as their net family property in the event they should die or separate from their spouses.

There are hundreds and thousands of wills in existence, sitting in safety deposit boxes and lawyers' vaults, that are going to be affected by the new Family Law Act.

Everyone would be well advised to give thought some bringing their wills and estate plans up to date in light of the new law.

> -Robert P. Main, is a partner with Teskey, Heacock, Ferguson & Main and practices in the area of Family Law.



He's got that \$1,000 smile

Penetang resident Tom Adair has two reasons to smile, not only is he surrounded by three lovely young ladies, but the number of his Penetanguishene Winterama button (1097) was drawn making him \$1,000 richer. Tom is pictured here with (from left to right) Winterama Queen

the Normandy Room of the Royal Canadian Legion Branch 68 in Penetang shortly after

busy week for Midland OPP

During the week ending, Feb. 10, Midland OPP investigated 66 general occurrences and probed 14 motor-vehicle accidents.

Chalk up another Seven municipalities notify Cabinet

of the provincial Legislature, each municipalities were denied the opmember of the Liberal Cabinet, the portunity to express their views on the leader of the opposition in the proposed changes. Legislature, and Simcoe East MPP Al The Ontario Electoral Boundaries -McLean and Simcoe Centre MPP Earl Commission's revised recom-Rowe, received a telegram from one mendations for altering provincial of seven area municipalities, ob- riding borders, to allow for five new jecting to proposed changes to the ridings, will be presented to the local provincial riding borders.

On the last day of the recent sitting The telegrams said that local

Legislature in the spring.

Tammy Gibbons, Princess Nancy Beaudoin and Princess Simone Desroches, just moments after Tammy pulled his ticket out of the 2,500 tickets in midnight on Saturday.





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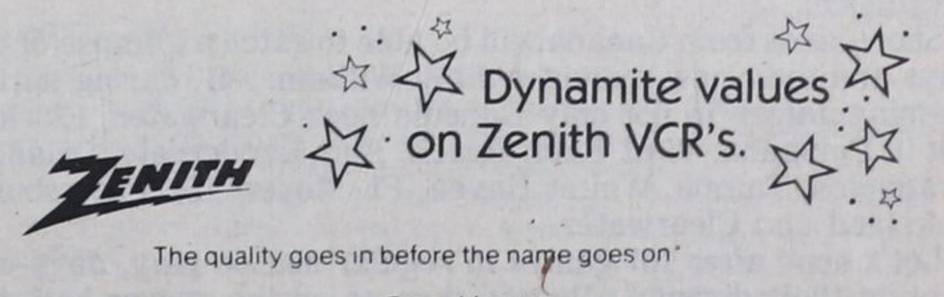
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