

Common law? Get a will!



Sometimes I feel like a broken record, but it bears repeating: common law couples in Ontario do not have any inheritance rights.

If you do not have a will, you are not legally married, and if assets are only in one name, then you will inherit nothing from your spouse, no matter how long you have lived together.

This exact situation went through the Ontario courts last year. Mary MacDonald lived with

James Pouliout for over 20 years. He had one son, Kyle, from whom he was estranged. Mary had gone through a bankruptcy not long before they bought a house, so only James went on title to the house, even though Mary put in a significant part of the down payment and had paid half the mortgage and other house expenses the entire time they lived together. James never made a will, and on his death, his estate fell automatically to his son.

Mary ended up getting part of the house, through a court order for what is called a construction trust based on the fact that she had paid so much toward the house over the years, but she should have gotten the entire house. If James had had a will, he could have left everything to her, and made her his executor. Instead, everything went to someone he probably wanted to get nothing.

We absorb so much about the law from media, whether that is television, movies, or social media posts from friends. The problem is that the law doesn't care what TV show you saw where a common law spouse got everything; in Ontario, it simply won't happen.

If you aren't legally married, you need to get some advice, and you really need to get a will.