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Ontario's Estate Laws are Changing – Part 2

As we reported last month, [Bill 245](#) (the *Accelerating Access to Justice Act*) received Royal Assent in April 2021. Schedule 9 to Bill 245 provides for significant updates to the [Succession Law Reform Act](#). Below, we follow up on last month's Solicitor's Tip to summarize the other two major upcoming developments to Ontario's estate legislation.

Wills No Longer to be Revoked by Marriage

Current State of the Law: At present, subject to certain exceptions, a pre-existing will is automatically revoked upon marriage under section 16 of the *Succession Law Reform Act*. In some cases, this has facilitated predatory marriages and it is at odds with the difference between the standard of capacity to validly marry and testamentary capacity.

What is Changing and When: Section 16 of the *Succession Law Reform Act* is being repealed on a date to be named by proclamation by the Lieutenant Governor no earlier than January 1, 2022. As a result, marriage will no longer automatically revoke a will. The effect of this change on wills previously revoked by marriage prior to the legislative amendment remains somewhat unclear.

Separated Spouses Treated as if Divorced

Current State of the Law: Wills are generally interpreted as if divorced spouses named in them have predeceased the testator. Similarly, divorced spouses do not have any automatic interest in a predeceasing divorced spouse's estate on intestacy. On the other hand, there are no such restrictions relating to the rights of separated spouses, who in most respects benefit from the same rights as married, unseparated spouses. This often causes problems where separated spouses do not update their wills and/or formalize the terms of their separation in a written agreement to alter or limit the rights that they may have in the estates of one another.

What is Changing and When: Updates to the *Succession Law Reform Act* will see separated spouses treated the same as divorced spouses. Separated spouses will be defined under a new subsection 43.1(2) as those who have lived separate and apart for three or more years, or whose rights as spouses have been resolved by way of a separation agreement, court order, or arbitration, and who remain separated at date of death. The new rules relating to separated spouses will apply where the separation occurs on or after the date on which the legislative updates become effective, which, as above, will be no earlier than January 1, 2022.

These major developments relating to the rights of married spouses both on intestacy and under wills can be expected to begin impacting our estates practices within the next year or so, and will give rise to a new set of considerations to keep in mind when assisting clients with estate planning and administration matters as these legislative amendments take effect. We will continue to track these developments and keep our readers updated as details become available as to the date(s) on which the changes to the *Succession Law Reform Act* under Bill 245 come into force.