

Rammage v Roussel Estate: **BLURRING THE LINES BETWEEN MIRROR AND MUTUAL WILLS**

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OVERVIEW

- Introduction
- Mirror Wills vs Mutual Wills
- *A Brief History of the Doctrine of Mutual Wills*
- *Edell v Sitzer Estate*
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- *After Rammage v Roussel Estate*
- Avoiding Litigation

A COMMON SCENARIO

Spouses **A** and **Z** (second marriage for both) seek advice regarding their estate plans. Both have 2 children from their previous marriage (**B** & **C** and **X** & **Y**) and both say they want to leave their estate to the other with the remainder to go to all 4 adult children.

Then...

Spouse **A** dies and her estate goes to spouse **Z**, then **Z** decides to change his will and leaves his estate to his children, **X** and **Y**. Adult children **B** & **C** are not happy.

RECIPROCAL WILLS

- Two parties may make wills leaving their estates to one another.
- Three types:
 - Mirror
 - Mutual
 - Joint

MIRROR WILLS

- “Just trust me” Wills
- Two parties make wills leaving their estates to one another.
- Typically, if one party wants to change their Will they would be at liberty to change their Will without notice to the other party.

MUTUAL WILLS

- Two parties make wills leaving their estates to one another.
- The parties agree to not change their Wills absent consent from the other party.

MUTUAL WILLS VS MIRROR WILLS

Mirror Wills

- No binding Agreement re: disposition of property.
- Surviving party can change their Will before or after the death of the other party.
- If survivor changes their will, equity would not intervene to ensure the survivor keeps their promise.

Mutual Wills

- Binding written or oral Agreement re: disposition of property.
- Surviving party cannot change their Will before or after the death of the other party.
- If survivor changes their will, equity would intervene to ensure the survivor keeps their promise.



A brief history of ...

THE DOCTRINE OF MUTUAL WILLS

- Elements of the doctrine first articulated in the English case 1769 in *Dufour v Pereira*, which was rediscovered and preserved in 1797 in *Lord Walpole v Lord Orford*.
- Leading case in Canada - *University of Manitoba v Sanderson* (1998).
- *Edell v Sitzer Estate* (2001) – doctrine of mutual wills affirmed by the Ontario Court of Appeal.

The most fundamental prerequisite for an application of the doctrine is that there be an agreement between the individuals who made the wills. It has been repeatedly insisted in the cases that:

- (a) the agreement must satisfy the requirements for a binding contract and not be “just some loose understanding or sense of moral obligation”;
- (b) It must be proven by clear and satisfactory evidence; and
- (c) it must include an agreement not to revoke the wills.

Cullity J. in *Edell v Sitzer Estate* at para. 58

A brief history of ...

THE DOCTRINE OF MUTUAL WILLS

- *Hall v McLaughlin Estate* (2006) - mutual wills found to exist absent a written agreement.
 - the agreement was found on 'loose evidence' tendered almost exclusively by the Plaintiffs
 - Evidence that had previously been rejected by the British Columbia Court of Appeal in *Brynelson Estate (Official Administrator of) v Verdeck* (2002)
- But... *Brewster v Lenzi* (2010) also distinguished *Brynelson Estate* and found wills to be mutual wills.

Rammage v Roussel Estate (2016)

Timeline:

- Alf (“A”) and Ruth (“R”) each have children from previous relationships.
- In 1985, A & R cohabit for 10 months then execute a cohabitation agreement.
- In 1997, A & R marry.
- In 1998, A & R execute wills.
- Until the fall of 2008, A was main “breadwinner”
- In 2009, A dies.
- In 2010, R executes new Will.
- In 2013, R dies

Rammage v Roussel Estate

- Issue: Are the 1998 Wills Mutual Wills?
 - No direct evidence of written or oral agreement
- Extrinsic Evidence:
 - R & A acted like they had a family consisting of four children. All children treated similarly.
 - Oral evidence from A's children.
 - Evidence of lawyer who drafted the 1998 wills.
 - Half of R's estate consisted of insurance proceeds that flowed to R as a result of A's death.
 - R's daughter's statements

Rammage v Roussel Estate

Held:

- A & R's 1998 wills were mutual wills
- The trustees of the estate of R were holding the residue of her estate in trust to be divided equally among R's children and A's children.

BRYNELSON VS RAMMAGE

Brynelson Estate v Verdeck

- Both Testators deceased
- No binding Agreement re: disposition of property as either Testator could have changed their mind.
- Surviving party can change their Will after the death of the other party.
- Equity would not intervene to ensure the survivor keeps their promise.
- Mirror Wills

Rammage v Roussel Estate

- Both Testators deceased
- Extrinsic evidence supporting binding oral Agreement re: division of property
- Surviving party cannot change their Will after the death of the other party.
- Survivor changed her will, so equity intervened to ensure the survivor keeps her promise
- Mutual Wills

Lavoie v Trudel (2016)

Timeline:

- Lucien (“**L**”) and Madeleine (“**M**”) each have children from previous relationships.
- In 1978, **L** & **M** cohabit.
- In 1981, **L** & **M** marry.
- In 1983, **L** & **M** execute “form” wills that are not prepared by a solicitor.
 - **M** leaves entire estate to **L** if he survives her for more than 30 days and if **L** predeceases to her two sons, Richard Lavoie and Michel Lavoie.
 - **L** leaves entire estate to **M** if she survives him for more than 30 days and if **M** predeceases to her two stepchildren, Richard Lavoie and Michel Lavoie
- In 2007, **M** dies.
- Six days after **M**’s death, **L** executes new Will.
- In 2009, **L** dies.

Lavoie v Trudel

- Issue: Are the 1983 Wills Mutual Wills?
- Extrinsic Evidence:
 - L & M drafted their own Wills
 - Nothing in Wills re: unable to revoke
 - No other documentary proof of their intentions
 - Third party witness was not neutral

Lavoie v Trudel

Held:

- L & M's 1983 wills were not mutual wills

Other grounds for relief?

- Suspicious circumstances? Yes
- Undue influence? No
- Unjust enrichment? No
- Quantum meruit? No

AVOIDING LITIGATION

- Ask questions to determine whether you are able to represent both spouses
- Assess whether spouses need independent estate planning/financial/legal advice
- Discuss the 'true intentions' of the parties → ask about mutuality
- Take copious contemporaneous notes
- Assess whether an alternative to reciprocal wills would be more appropriate in light of your client's expressed wishes



Thank you.

Questions?